

## "THE SIGNIFICANCE OF ALTERNATIVE DISPUTE RESOLUTION IN INDIA'S LEGAL LANDSCAPE"

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### ABSTRACT

Alternative Dispute Resolution (ADR) has gained recognition as an important tool for addressing the drawbacks of traditional litigation in the Indian legal landscape. This paper will begin by looking at what ADR is, discussing its historical roots in ancient Indian practices, and how it has become practiced formally. The paper will then give an overview of the various kinds of ADR, including arbitration, mediation, and conciliation, to show how these three methods serve distinct functions in ADR. We will then discuss the legislative framework in which ADR operates, including the Arbitration and Conciliation Act 1996 and the Legal Services Authorities Act 1987, to provide grounds for ADR in the Indian legal system.

The benefits of ADR are many, which include reduced costs, speedy resolutions, and the ability to maintain relationships in a dispute. Also, ADR is not without difficulty. The main challenges are a lack of awareness, inconsistency in applying ADR, and limitations in reaching ADR resources, which undermine its benefits. There will be case studies that offer additional insight into how ADR has been effectively used in various situations, be it in family disputes, disputes involving commercial issues, or disputes in consumer rights, and how ADR is transforming the legal system.

In conclusion, while ADR offers a way to move away from the current state of litigation in India, there must be a continued effort to develop ADR's usability and impact. By effectively integrating ADR within the legal system, ADR can be positioned to address the backlog of cases in the courts and establish a mindset for collaborative problem-solving, which will contribute to a more efficient and equitable delivery of justice to the people in India.

**KEYWORDS:** Alternate Dispute Resolution, collaborative problem-solving, equitable justice, speedy resolution, reduced costs.

### INTRODUCTION

Time-consuming and burdensome, legal battles among individuals or corporations are settled through litigation. In India, given the present status of the judicial system which has over 3 crore cases pending, it may take several years for the courts to decide on a civil or commercial litigation case. Consequently, currently, businesses prefer using other methods instead of going to court in order to resolve their problems. This has led to the search for alternative means of settling

disputes and unclogging the congested traditional litigation infrastructure.<sup>1398</sup> Nowadays, alternative or amicable dispute resolution (ADR) mechanisms have acquired a significant place in resolving contemporary disputes. With increased commercial transactions as well as prolonged process delays in courts together with burgeoning costs and upward trend of out-of-court settlements; Alternative Dispute Resolution methods are now preferred than

<sup>1398</sup> A Dalmiya - International Journal of Social Science and Economic ..., 2023 - ijsseer.org. The Impact of Pending Court Cases on the Efficacy of the Judicial System in India: Justice Delayed is Justice Denied'

traditional litigation. Alternative Dispute Resolution (ADR): An overview in solution to Goals and general methods of Applied Family ology for all situations where people, companies, or public sector institutions manage disputes or ambiguities between themselves without involving the judiciary<sup>1399</sup>. This is an umbrella term for a range of processes normally not determined by the findings of court. <sup>1400</sup>These methods provide quick as well as cost-effective alternatives for both, individuals and businesses to extricate themselves from activity avoiding (sometime) the need to resort to court action due to overacting courtroom activities. Accordingly, as commercial transactions continue to grow increasingly gargantuan in size the emphasis it will be placed more than ever on out-of-court settlements and alternative dispute resolution mechanisms.

#### **HISTORICAL DEVELOPMENT OF ADR IN INDIA**

India's Alternative Dispute Resolution (ADR) has roots in ancient times. People used informal methods like Puga, Sreni, and Kula (also called Panchayats) to solve different problems, including contract and marriage issues<sup>1401</sup>. When the British ruled, they made laws such as the Bengal Resolution Act of 1772, the Bengal Regulation Act of 1781, and the Indian Arbitration Act of 1899. These laws gave courts the power to send disputes to arbitration<sup>1402</sup>. The Arbitration Act of 1940 came next. Later, the Arbitration and Conciliation Act of 1996 took its place<sup>1403</sup>. This new act brought together old laws that matched international rules and tried to cut down on court involvement and speed up problem-solving. In big court cases like Guru

Nanak Foundation v. Rattan Singh & Sons (1981) the Supreme Court criticized the procedural complexities of the Arbitration Act of 1940, highlighting the need for reforms to streamline arbitration practices and reduce legal entanglements. The case emphasized the importance of judicial control over arbitration proceedings while expressing concern about delays and inefficiencies.

However, in the case of Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc. (2012), the Court reinforced the territoriality principle in international arbitration, asserting that Indian courts have limited jurisdiction over such matters, which clarified the boundaries of arbitration law in India. Furthermore, in the case of Indian Oil Corporation Ltd. v. Amritsar Gas Service (2009), the Supreme Court ruled that arbitration agreements must be in writing, underscoring the necessity for formal documentation in the ADR process to ensure clarity and enforceability. These changes changed how people understand and use ADR methods in India<sup>1404</sup>.

#### **TYPES OF ADR MECHANISMS**

In India, people can settle disagreements without going to court through different methods. These include talking it out with a neutral person (mediation) having an expert decide (arbitration), or working together to find a solution (conciliation). Each of these approaches has its way of handling disputes and serves a specific purpose. These are elaborated as:

Mediation is a voluntary process Where a Neutral Third Party facilitates communication between the parties in dispute to reach a Mutually Acceptable Agreement. <sup>1405</sup>Section 89 of the Code of Civil Procedure 1908 (CPC) provides for mediation as one of the ADR mechanisms available in India. <sup>1406</sup>Mediation

<sup>1399</sup> A Sharma - Supremo Amicus, 2020 - HeinOnline. A Study on Crisis in Indian Judiciary: An Analysis of the Periodic Syndrome of Delay, Pendency and Arrears.

<sup>1400</sup> P Murti - Jus Corpus LJ, 2022 - HeinOnline. Evolution Problem and Challenges in the Indian Judiciary. [HTML]

<sup>1401</sup> Abhishek Kumar, The Historical Back Ground of ADR System in India | PDF | Alternative Dispute Resolution | Arbitration, Alternative Dispute Resolution <https://www.scribd.com/document/501552750/the-historical-back-ground-of-ADR-system-in-India>.

<sup>1402</sup> Evolution and Codification of ADR mechanism in India, VIA Mediation Centre <https://viamediationcentre.org/readnews/MzEx/Evolution-and-Codification-of-ADR-mechanism-in-India>.

<sup>1403</sup> <https://www.yourlegalcareercoach.com/history-of-adr-in-india-an-overview/>.

<sup>1404</sup> Historical evolution of ADR in India and Emerging Trends in ADR in Today's Corporate World, <https://www.legalserviceindia.com/legal/article-13036-historical-evolution-of-adr-in-india-and-emerging-trends-in-adr-in-today-s-corporate-world.html>.

<sup>1405</sup> Code of Civil Procedure 1908 (CPC)

<sup>1406</sup> Mediation and Conciliation Rules 2004

and Conciliation Rules 2004 of the Supreme Court of India is also applicable to the regulation of mediation proceedings in India.

Mediation has many benefits above the traditional method of litigation. You get an added dimension of control over procedure and the ability to have your case presented in a more relaxed environment. In addition, mediation preserves relations between parties which might not be possible in adversarial litigation. Despite this, the Hon'ble Supreme Court of India in <sup>1407</sup>*Afcons Infrastructure Ltd. v. Chennai Metro Rail Ltd.*, (2010) has observed that mediation is a way to find solutions without going through time-consuming and costly litigation. It also points out the value of mediation as an ADR process recognizing it as a non-adjudicative means that keeps cases within the court system while still maintaining legal redress; the court has identified some forms of cases not suitable for ADR, suggested for creation of Motor Accidents Mediation Authority (MAMA) at all district levels to ensure prompt case settlement and timely compensation of victims in road accident claims, and through other measures such as setting up a panel of experts to draft a mediation statute providing for matters like enforceability of settlements, secrecy and neutrality among mediators, show that mediation is increasingly seen as an alternative dispute resolution mechanism over conventional litigation in India.

Another widely seen ADR mechanism in India is arbitration. <sup>1408</sup>Arbitration and Conciliation Act 1996 (ACA) governs arbitration proceedings in India. Arbitration: Submission of disputes to a neutral third party or tribunal for resolution chosen by the parties. Arbitration provides several benefits such as flexibility in the procedure, choice of forum, and finality, especially in award. In <sup>1409</sup>*Bharat Aluminium Co. In v. Kaiser Aluminium Technical Services Inc.*,

(2012) the Supreme Court of India held that arbitration was an important discipline for resolving commercial disputes involving parties from different jurisdictions. It also addressed the following important questions concerning the Arbitration and Conciliation Act, 1996 with reference to international arbitration seated outside India. It declared that the "seat" of arbitration is determinative of procedural law and jurisdiction, finding that Part I of the Act which covers domestic arbitration does not apply to arbitrations held abroad. This judgment overturned <sup>1410</sup>*Bhatia International v. Bulk Trading S.A.* (2002) in which Indian courts were allowed to intervene in international arbitrations outside India. The Court explained that by choosing a foreign seat for arbitration, parties implicitly exclude Part I of the Act from application; thus, Indian courts would have jurisdiction over enforcement or annulment of foreign arbitral awards only under Part II of the Act on recognition and enforcement of foreign awards. In this regard, BALCO's applications seeking setting aside of arbitral awards delivered in London were dismissed by the Court underscoring principle party autonomy in international commercial transactions and providing a coherent framework within which foreign arbitral awards may be enforced in India.

Conciliation is another ADR mechanism recognized under Section 89 of the CPC. The Conciliation Rules 2004 framed by the Supreme Court of India govern conciliation proceeding in India. Conciliation involves assistance by a conciliator who facilitates communication between disputing parties to reach a mutually acceptable agreement. Conciliation has several advantages over traditional litigation processes. It allows for flexibility in procedure and enables parties to present their cases in a permissive environment. In <sup>1411</sup>*Mysore Cements Ltd.v.Sreedharan* (2003), the Supreme Court of India observed that conciliation is an effective means of resolving disputes without resorting to

<sup>1407</sup> *Afcons Infrastructure Ltd. Vs Chennai Metro Rail Ltd.*, (2010) 12SCC624

<sup>1408</sup> Arbitration and Conciliation Act 1996 (ACA)

<sup>1409</sup> *Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc.*, (2012) 9SCC552

<sup>1410</sup> *Bhatia International v. Bulk Trading S.A.* (2002) SCC 105

<sup>1411</sup> *Mysore Cements Ltd. Vs Sreedharan* (2003)3SCC376

lengthy and expensive litigation. In this India addressed the enforceability of a "Letter of Comfort" that was part of a conciliation process under the Arbitration and Conciliation Act, 1996. The dispute arose after Mysore Cements contracted Svedala for machinery that failed to perform as promised, leading to arbitration proceedings that were subsequently converted to conciliation at Svedala's request. A "Memorandum of Conciliation" was signed, which included terms for compensation in case of failure to rectify the machinery issues, and a "Letter of Comfort" was issued by Svedala, committing to pay compensation if the machinery was not repaired by specified deadlines. When Mysore Cements sought to enforce this Letter through the High Court, their petition was dismissed because the conciliators had not issued a decision that constituted an enforceable award under Section 74 of the Act. However, the Supreme Court ruled that the Letter of Comfort, being a binding agreement reached during the conciliation process and authenticated by the conciliators, was enforceable. This ruling reinforced the legitimacy of conciliation as a dispute resolution mechanism, establishing that settlements reached through conciliation can have the same binding effect as arbitration awards, thereby promoting the use of conciliation in commercial disputes in India.

## **LEGISLATIVE FRAMEWORK FOR ADR IN INDIA**

### **1. ARBITRATION AND CONCILIATION ACT, 1996**

The increased pendency of cases in the Indian courts demands for more efficient means to redress disputes. The Indian legal system recognises various methods of alternative disputes resolution which include arbitration, mediation conciliation and negotiation. Thus, there are some legislations, ADR laws and its cases for conduction of such processes. The governing legislation on Arbitration in India is <sup>1412</sup>The Arbitration and Conciliation Act, 1996 (Act No. 26 of 1996). It also contains the exhaustive

code for arbitration and conciliation proceedings.

Section 7-9 – an arbitration agreement and its form, enactment (domestic or International).

Sections 11-15 deal with the appointment and conduct of arbitrators, as applicable in arbitration.

Whereas, Section 34 provides no entitlement to challenge an arbitral award from Court.

In the simplest terms Section 7 defines an Arbitration agreement and specifies that it has to be in writing, this may include a clause or could also mean any other form of written document, like for instance sides agreements. This part is important because it lays the groundwork for any arbitration, making sure both you and we know what disputes are covered by arbitration. Under section 8, the court may refer a matter to arbitration if a valid agreement is found. When one side tries to litigate the dispute even though it has agreed to arbitrate, the other party can ask for a court order enforcing their agreement and instead referring case arbitration. Interim measures are dealt with under Section 9 i.e. those which can be requested from Court either prior to or during arbitration process.

The Supreme Court of India enunciated in <sup>1413</sup>Bharat Aluminium Co. v Kaiser Aluminium Technical Services Inc. (2002) that courts must see that arbitration can take place effectively without unnecessary curtailment and court intervention.

### **2. LEGAL SERVICES AUTHORITIES ACT, 1987**

<sup>1414</sup>Legal Services Authorities Act, 1987 – It provides free Legal Aid to eligible persons and also aim at promoting Lok Adalats as a Top-down alternative dispute resolution.

Key Provisions:

<sup>1413</sup> Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc., (2002) 4 SCC 693

<sup>1414</sup> the legal services authorities act, 1987

<sup>1412</sup> Arbitration and Conciliation Act 1996 (ACA)

Section 19: Provides for the establishment of Lok Adalats, to encourage settlement of disputes by agreement between parties.

Chapter 2: Lok Adalats Section 20: Procedure to be followed by a Lok Adalat and the award passed by it is considered as the decree of civil court.

In the case of <sup>1415</sup>K.K. Verma v. Union of India, (2007), the High Court opined that it is the Lok Adalats which can play a vital role in advancing justice and settling disputes quickly.

### **3. MEDIATION AND CONCILIATION RULES, 2004**

These <sup>1416</sup>Mediation and Conciliation rules, 2004 provide a procedural guide for mediation and outline the structure within which conciliators can effectively address conflicts. These apply both in pre-litigation and disputes that have gone to court.

#### **Key Provisions:**

The rules provide for voluntary mediation and indicates the process of appointment of mediators. They also provide standards for mediation session procedures, confidentiality, and enforceability of agreements created during a successful date.

The Bombay High Court, while admitting the requirement of mediation even in civil disputes, has appealed to parties to consider it before any further process of litigation in the case of <sup>1417</sup>Afzal Imtiyaz vs the State of Maharashtra in 2017.

### **4. CONSUMER PROTECTION ACT, 2019**

The <sup>1418</sup>Consumer Protection Act, 2019 is a law that includes mediation as a facility for solving the problems of consumers.

#### **Key Provisions:**

Chapters 37-40 prescribe mediation and the sourcing of mediation cells in the Consumer

Disputes Redressal Commission. The statute advises mediation as the initial measure for the consumers to complain and seek to be healed of their pain;

In the case of The National Consumer Disputes Redressal Commission (NCDRC) in <sup>1419</sup>Shree Tirthankar Chikitsalaya v. Kunal Soni (2022) lauded the mediation for its great results of quick resolution to the consumer's complaints.

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

#### **BENEFITS OF ADR IN INDIA**

1. Speedier Determination: ADR forms regularly result in faster results compared to the long court case handle, which can take a long time. Settlements or intervention grants can frequently be come to inside weeks or months.

2. Cost-Effectiveness: ADR is for the most part less costly than case. The costs related to court trials, such as lawyer expenses, court expenses, and other related costs, are altogether decreased in ADR

3. Adaptability: ADR methods are more versatile than court forms. Parties can plan sessions at their comfort and tailor the method to suit their particular needs, upgrading the probability of an amicable resolution

#### **CHALLENGES OF ADR IN INDIA**

1. Need for Framework: There's a shortage of ADR centers, particularly in smaller towns and rural regions. This need for availability can prevent the adequacy of ADR mechanisms

2. Government Back: Constrained administrative backing and assets for ADR activities confine their development and usage over the country

3. Obstructions from Courts: Visit court mediations in ADR forms can weaken the independence of these instruments, leading to delays and complications that ADR points to avoid

<sup>1415</sup>K.K. Verma v. Union of India, Writ Petition No. 3899/2007, High Court of Delhi.

<sup>1416</sup> Mediation and Conciliation Rules 2004

<sup>1417</sup> Afzal Imtiyaz v. State of Maharashtra, 2017 SCC Online Bom 3515.

<sup>1418</sup> Consumer Protection Act, 2019

<sup>1419</sup> Shree Tirthankar Chikitsalaya v. Kunal Soni, 2022 SCC Online NCDRC 180.

## **CASE STUDIES AND EXAMPLES OF SUCCESSFUL ADR IN INDIA**

There are numerous case studies and examples of the success of ADR (Alternate Dispute Resolution) in India.

### **CASE STUDY 1: ARBITRATION IN CONSTRUCTION DISPUTES**

The <sup>1420</sup>Afcons Infrastructure Ltd versus Cherian Varkey Construction Co (P) Ltd, 2010 is a breakthrough case. Hence, the Supreme Court believed that arbitration was the best solution for solving construction disputes. The arbitration process is faster than the traditional court proceedings. It also avoids the expenses that come with lengthy court battles. The idea was that the arbitration process also promotes the principles of fairness and impartiality. The problem-solving is perfect between the Arbitrators providing expert knowledge on issues related to construction disputes in the building field or any other relevant in question. More over the decision acts as a precedent for upcoming construction disputant resolutions. Arbitration acts as an assurance of privacy and gets to be held as part of the business relationship without being disclosed to other parties. On top of that, it also reduces anxiety tied to long, drawn-out court trials. In the final analysis, arbitration is the undisputed favored mode of construction dispute resolution.

### **CASE STUDY 2: MEDIATION IN COMMERCIAL DISPUTES**

<sup>1421</sup>Salem Bar Association v Union of India was a significant case. In the Supreme Court Case Mediation was suggested as an effective way of resolving commercial disputes. Mediation in the commercial sector may be affected by the Pairwise candle colorability. It is an improvement idea, so that also International Concepts maintain velocity and line waterproof. Creativity in mediation enables parties to reach joint decisions that are to their best advantage. The judiciary stressed that mediation decreases

expenses related to lengthy court proceedings. Mediation guarantees quicker resolution than traditional trials. Weight reduction leverage is also one of the plunge decreases with lower symptoms. Mediation on the other hand, encourages the parties in serious dialogue, which lets them resolve their differences either. Total mediation has become a highly preferred mode for commercial dispute resolution.

### **CASE STUDY 3: CONCILIATION IN TRADARISI INDUSTRIA**

<sup>1422</sup>Bajaj Auto Limited vs Rajendra Kumar Jagannath Kathar & Ors, 2013 yeses kraal da hasso neli in this case the Supreme Court revealed that conciliation is the most effective way to solve industrial disputes. Conciliation is much quicker as opposed to the normal litigation methods. It cuts down the expenses that are associated with the prolongation of the court disputes. Conciliation of fairness and impartiality provides a good breeding ground for industrial relations. Conciliators act as the catalyst between the parties to bring about the correct and proper resolution of the dispute kinship. The verdict sets an example for the coming industrial dispute resolutions. Conciliation is the way of developing the most interesting ideas with the best relation possible for the partners. It respects the safety of the data by keeping the business relationships intact. In general, conciliation has become the preferred option for settling industrial disputes.

### **EXAMPLE 1: DELHI HIGH COURT MEDIATION CENTRE**

The <sup>1423</sup>Delhi High Court Mediation Centre was founded in 2006. Although it has more than 50 thousand records in the mediation field. By trained mediators, the way of dispute resolution is built as a platform. The center gives the platform to the parties to solve their problems peacefully. When parties are involved in negotiation, mediation brings a result faster than traditional lawsuits. It brings about less

<sup>1420</sup> Afcons Infrastructure Ltd v Cherian Varkey Construction Co (P) Ltd (2010)8 SCC 24.

<sup>1421</sup> Salem Advocate Bar Association v Union of India (2003)1 SCC 49.

<sup>1422</sup> Bajaj Auto Limited vs Rajendra Kumar Jagannath Kathar & Ors, 2013 5 SCC 691

<sup>1423</sup> Delhi High Court Mediation Centre, Annual Report (2020).

financial losses whereas long court cases require heavy spending. The center is the driver in creating different and the best way that result in the satisfaction of both parties. The mediation process guarantees that confidentiality is kept and so maintains the business relationships alive. Another benefit is that it reduces the pressure through long court processes and it allows making a good and healthy environment for the parties to cooperate. As a whole, this has become a reference point in the successful application of mediation.

### **CONCLUSION**

India has made important progress in using Alternative Dispute Resolution (ADR) methods to solve disagreements quickly and effectively. With a long history of ADR development, India provides different ways to resolve conflicts, such as mediation, arbitration, and conciliation. Laws like the Arbitration Act help support the growth of ADR. Even though there are some difficulties, ADR has shown advantages like lessening the number of cases in courts, saving money, and giving more control to the people involved. Examples of successful ADR cases show its promise in India, making it a good choice for resolving disputes.



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