



INDIAN JOURNAL OF
LEGAL REVIEW

VOLUME 4 AND ISSUE 4 OF 2024

INSTITUTE OF LEGAL EDUCATION



INDIAN JOURNAL OF LEGAL REVIEW

APIS – 3920 – 0001 | ISSN – 2583-2344

(Free and Open Access Journal)

Journal's Home Page – <https://ijlr.iledu.in/>

Journal's Editorial Page – <https://ijlr.iledu.in/editorial-board/>

Volume 4 and Issue 4 of 2024 (Access Full Issue on – <https://ijlr.iledu.in/volume-4-and-issue-4-of-2024/>)

Publisher

Prasanna S,

Chairman of Institute of Legal Education (Established by I.L.E. Educational Trust)

No. 08, Arul Nagar, Seera Thoppu,

Maudhanda Kurichi, Srirangam,

Tiruchirappalli – 620102

Phone : +91 94896 71437 – info@iledu.in / Chairman@iledu.in



ILE Publication House is the
**India's Largest
Scholarly Publisher**

© Institute of Legal Education

Copyright Disclaimer: All rights are reserve with Institute of Legal Education. No part of the material published on this website (Articles or Research Papers including those published in this journal) may be reproduced, distributed, or transmitted in any form or by any means, including photocopying, recording, or other electronic or mechanical methods, without the prior written permission of the publisher. For more details refer <https://ijlr.iledu.in/terms-and-condition/>

BEYOND COURTROOMS: ADR AS A PATHWAY TO JUSTICE FOR ALL

AUTHOR – DHRUTI DEWANGAN, STUDENT AT KALINGA UNIVERSITY, NAYA RAIPUR

BEST CITATION – DHRUTI DEWANGAN, BEYOND COURTROOMS: ADR AS A PATHWAY TO JUSTICE FOR ALL, *INDIAN JOURNAL OF LEGAL REVIEW (IJLR)*, 4 (4) OF 2024, PG. 355-362, APIS – 3920 – 0001 & ISSN – 2583-2344.

ABSTRACT

One of every citizen's fundamental right, access to justice is closely associated with the idea of the rule of law. Alternative Dispute Resolution (ADR) may also provide a lot of advantages over court procedures when parties are seeking a final and binding resolution. The ADR gives parties access to a more reasonable range. This takes a close look at the topic of access to justice, analyzing how well Alternative Dispute Resolution is working and what more might be required to make access to justice sincerely accessible. To guarantee that everyone has access to ADR as method of dispute resolution and that its advantages be made widely known. ADR focuses on out of court settlements but also gives possibility of appeal in courts in case of non-satisfaction of parties. The bigger structural challenges such as uneven access to legal counsel and disparities in power between parties must be rectified in order to fully achieve ADR's promise as a path to justice for all. This research study aims to understand how ADR processes can effectively make justice accessible beyond the traditional courtroom-centric approach. This Article examines the advantages, disadvantages, and effectiveness of Alternative Dispute Resolution (ADR) as it pertains to equitable and accessible conflict resolution for different demographics. This paper in hand seeks to demonstrate the transformational potential of alternative dispute resolution methods in advancing justice for all parties by analysing case studies, legal frameworks, and empirical research.

INTRODUCTION

Alternative Dispute Resolution

Alternative dispute resolution (ADR) refers to a variety of methods for settling disputes that assist opposing disputant sides in reaching a mutually benefitted decision without need to go to court or litigate the subject. These approaches typically include a third party who assists them in resolving the issues at hand. In many circumstances, ADR procedures are employed alongside the legal process with judicial approval. ADR may address a wide range of issues, including civil, commercial, industrial, and familial disputes. Common kinds of ADR methods include Arbitration, Conciliation, Negotiation, Mediation, Etc...

The Constitution guarantees access to justice for all, primarily through Article 39A⁵²⁵, which

states that everyone must have an equal opportunity to obtain justice and stipulates that it shouldn't be limited to any citizen because of economic or other impairments. However, it has been hampered by factors such as impoverishment, illiteracy, apathy, social and political stagnation, and so on. There exists a need for out-of-court settlement procedures, such as ADR, to assist resolve conflicts in a shorter period of time and in an efficient manner, and without the use of the juridical technicality of the court system.

History & Evolution of Alternative Dispute Resolution (ADR)

Alternative dispute resolution has been in the justice system of India since time immemorial. Its first reference is in the Bhradarnyaka Upanishad, which names Puga, Shreni, and

⁵²⁵ INDIA CONST. art. 39A, amended by The Constitution (Forty-second Amendment) Act, 1976.

Kula.⁵²⁶ Previously, many local differences were resolved through the panchayat system, which serves as a kind of ADR. They were able to deal with every type of issue possible including commercial, marital, contractual, civil, and criminal. Similar provisions are included in the Hedayas, one of the primary sources of Muslim law. Moving forward in time, British rule in India introduced with particular laws and facilities for ADR processes. ADR grew rapidly before and after India's independence from British rule. Both Bengal Regulation Act 1781 and the Bengal Resolution Act 1771 were the first pieces of law that established ADR in India. This legislation included detailed provisions stating that the courts were authorized to recommend matters to arbitration either upon the request of the disputants or at own discretion. After almost a decade, the Code of Civil Procedure came into force in 1859, with sections 312–327 mentioning arbitration, however those parts dealing to arbitration were removed in 1882⁵²⁷. The Indian Arbitration Act of 1899 was created in order to implement an alternate conflict resolution process in India. The act was centred on English laws. Subsequently in 1908, the CPC were amended and section 89 with the second schedule provided the courts broad authority to send conflicts to ADR mechanisms. Following that, in 1937, India ratified and approved the Geneva Convention, and a corresponding law was enacted in the shape of the Arbitration (Protocol and Convention) Act. The Indian Arbitration Act of 1899, as well as section 89 of the CPC's second schedule, were abolished and substituted with the Indian Arbitration Act of 1940.

Afterwards, in 1961, India became a signatory to the New York Convention and in 1985, India approved and ratified the UNCITRAL model legislation on commercial arbitration

internationally. Ultimately, in 1996, the Arbitration (Protocol and Convention) Act of 1937, the Arbitration Act of 1940, and the Foreign Award (Recognition and Convention) Act of 1961 were all repealed and solidified into the one string of legislation that is known as the Arbitration and Conciliation Act of 1996, which is based on the UNCITRAL model law.

UNDERSTANDING ACCESS TO JUSTICE

Access to justice is a legally protected fundamental and essential right of people. Access to justice refers to the accessibility with which justice could be attained through judicial processes that are both unbiased and without prejudice. Access to justice means that all should be able to find equal and fair opportunity, the criteria being totally irrelevant as it can range from a caste-based issue or maybe religion based. The Constitution Of India within Article 14, 21 and 39-A secures for the citizens of this country, among others, justice and our government as well The Courts have from time to time passed legislations and state policies that they call access to justice. Access to justice is not just about persons seeking justice, but also about delivering justice within a reasonable time spectrum. The preamble of India's constitution also enshrines justice: social, economic, and political, which implies providing justice or access to justice to Indian citizens in various social, economic, and political aspects⁵²⁸. In the case of Anita Kushwaha v. Pushap Sudan⁵²⁹, the Supreme Court of India concluded that access to justice is a fundamental right safeguarded by Articles 14 and 21 of the Indian Constitution.

Necessity of Access to Justice

Access to justice is a key value in every democratic society, and it is especially important given the country's varied population, complicated legal system, and socioeconomic issues. Following are some of its necessities -

⁵²⁶ LEGAL SERVICE INDIA,
<https://www.legalserviceindia.com/legal/article-13036-historical-evolution-of-adr-in-india-and-emerging-trends-in-adr-in-today-s-corporate-world.html>
(last visited Apr. 29, 2024).

⁵²⁷ VIA MEDIATION & ARBITRATION CENTRE,
<https://viamediationcentre.org/readnews/MzEx/Evolution-and-Codification-of-ADR-mechanism-in-India> (last visited Apr. 29, 2024).

⁵²⁸ 23 DD BASU, CONSTITUTION OF INDIA 21 (2018).

⁵²⁹ Anita Kushwaha v. Pushap Sudan, (2016) 8 SCC 509.

- The Indian Constitution establishes and obligates the standards of equality, fairness, and the rule of law. Access to justice is more than a legal right, it is also an inalienable right guaranteed to all people by Articles 14 and 21, which provide equality before the law and the preservation of life and personal liberty.
 - India is a vast country with wide socioeconomic disparities. The access to justice is the utmost importance for needy, downtrodden and minorities as these groups are marginalized so often discriminated against there their lives were always examination. Because they have no access to the courts, or none that amounts to an effective remedy and excluded too from their entitlements when it might benefit them.
 - Access to justice promotes integrity, transparency, and effective governance by allowing individuals to dispute arbitrary or unfair actions taken by the government and its authorities. It acts as a check against abuse of authority and corruption, assisting to the general integrity of the judicial system.
 - Access to justice is critical for the preservation and execution of numerous rights, including civil, human, labour, and environmental rights. It guarantees that individuals can seek remedy in court for infringement of their rights.
- lawyer costs and other litigation expenses. The fines are sometimes prohibitive, especially for low-income households and three-quarters of those taken to court were not represented by legal counsel the time their case reached trial.
 - One more concern is the absence of legal knowledge as well as literacy⁵³⁰, due to which people are not aware about their lawful rights and access in judiciary. It might also leave people not knowing how to enforce it or even give them the resources they need in order for them to seek legal assistance.
 - The next challenge is dealing with technical barriers and obstacles. Long and tricky legal processes, as well as court delays and errors, can make it difficult to obtain justice. Prolonged court processes not only raise expenses, but also induce mental stress and uncertainty for plaintiffs, deterring them from taking their claims to the end.
 - Furthermore, there is a matter of social and cultural barriers. Societal conventions, cultural customs, and the shame associated with legal conflicts may deter people from seeking justice, particularly women, minorities, and disadvantaged groups. Fear of revenge, social exclusion, or social pressure might discourage persons from seeking legal action for fear of retribution or further injury.
 - Finally, there is insufficient legal support and assistance services. The scarcity of legal aid services, notably free or subsidized legal help for low-income people, can limit access to justice. Furthermore, inadequate resources such as counselling, interpreting, and victim assistance programs may impede access to justice for people with special

Challenges to Access to Justice

Real experiences demonstrate that access to justice has become complicated and disheartening. The judicial system has slowed due to outstanding cases, high expenses, complicated procedures, a lack of knowledge, and other factors. The causes behind the challenges can be classified as follows:

- Legal facilities are expensive, which is one of the most significant barriers to access to justice. The process of law is expensive, often involving large expenditure such as those court fees,

⁵³⁰ [Dhanashree Dunakhe](#), *Barriers in The Access to Justice in India*, IILM BLOG (Dec. 13).

needs, such as victims of domestic abuse or human trafficking.

OVERVIEW OF ALTERNATIVE DISPUTE RESOLUTION

Kinds of Alternative Dispute Resolution Methods

Alternative Dispute Resolution consists of many methods and techniques for settling conflicts beyond traditional litigation. Here are some frequent types of ADR with relation to India.

- **Arbitration** – An arbitration procedure involves presenting a conflict to a neutral third party for resolution. The third personality is called an arbitrator. It is enforceable upon parties and known as an 'arbitral award'. Arbitration helps in obtaining a fair resolution of the dispute without resorting to court and avoiding needless expense and time. Arbitration is invalid in the absence of an agreement to arbitrate in advance of the development of a dispute. The arbitration process in India is regulated by the Arbitration and Conciliation Act of 1996. Arbitration is a prevalent practice in business contracts, labour disputes, and international issues. Arbitration is categorized into two types⁵³¹: Ad hoc arbitration and institutional arbitration.
- **Mediation** – In mediation, an unbiased third person known as the mediator promotes conversation and discussion between the opposing parties in order to assist them achieve a mutually accepted settlement. The mediator does not enforce a decision, but rather helps the parties explore possibilities and establish common ground. The parties have entire control over this procedure. The role of a mediator is simply to help the parties achieve an agreement on their issue. The sole aim of this process is to get an option which seems a "mid-

way solution". Mediation is widely used in all types of disputes, marital discord or financial issues; workplace arguments and for individuals to come together regardless.

- **Conciliation** – The conciliator helps the parties identify concerns, explore their interests, and provide settlement solutions. This is similar to mediation and differs because the third-party neutral, called a conciliator generally takes on an active role. While the conciliator may make recommendations and ideas, the parties retain final decision-making authority. Conciliation is a type of arbitration that is a bit more informal. It is also regulated in India under the Arbitration and Conciliation Act of 1996, and it applies to conflicts resulting from legal agreements, whether contractual or not. Conciliation is frequently seen in labour disputes, communal problems, and individual disagreements.
- **Negotiation** – A direct and non-binding method of settling disputes, negotiation occurs when the parties to a dispute sit down and try to work things out as equals merely talking it over in an attempt to agree on how all interested sides like for that situation be solved. It needs to either be through a representative or face-face and can occur in different scenarios, like: commercial transactions such as business contracts; personnel matters that deal with things like personal disputes arising from an employee complaining about the work environment. All negotiations are conducted without a fixed set of rules and the outcomes have no binding authority on either party.
- **Lok Adalat** – Lok Adalat translates from the Hindi to mean and people's court, is an alternative dispute mechanism in India which involves mediation or conciliation through a panel of judges

⁵³¹ S. Chaitanya Shashank & Kausalya T. Madhavan, *ADR in India: Legislations and Practices*, ACADEMIKE (Jan. 07, 2015).

(sitting or retired), lawyers, social activists etc. An essential objective of Lok Adalat is to promote speedy and cost-effective resolution of disputes in a social prevalent, which might have become main arena for conflict such as public utility service sectors, financial services sector etc. This method was more concerned in easing the burden of pending cases on courts, and it looked at a number of elements from social equity. The importance of this method is highlighted in the case of Abdul Hasan and National Legal Service Authority vs. Delhi Vidyut Board and Others⁵³² and it was held that there should be setting up of permanent Lok Adalat.

These many forms of ADR provide parties with adaptable and efficient substitutes to traditional litigation, allowing them to resolve conflicts in a more cooperative, affordable, and adapted to their own circumstances.

Advantages of ADR Methods in Comparison with Traditional Litigation Process

There are numerous advantages of ADR processes over the traditional court system, some of which are as follows –

- Confidentiality– While court procedures are often accessible to everyone, ADR proceedings provide a confidential atmosphere. Parties may openly debate sensitive subjects and find innovative solutions without fear of public scrutiny⁵³³. This permits them to focus on the merits of the dispute rather than its public impact, which may be especially important when commercial reputations and trade secrets are at stake.
- Party autonomy – ADR allows parties to have more influence over how their disagreement is addressed than court

action⁵³⁴. In contrast to judicial litigation, the parties can choose the best suited decision-makers for their disagreement.

- Flexibility – ADR allows the parties concerned to have more freedom and control. Unlike court proceedings, which have a set format and a judge makes the ultimate judgment, ADR allows opposing parties to actively engage in the settlement process.
- Preserving Relationships – ADR encourages communication and collaboration among conflicting parties. ADR promotes discussion and understanding, which helps to preserve relations that may be harmed by combative court processes. This cooperative approach frequently yields mutually beneficial solutions and fosters long-term cooperation.
- Simpler Procedures – ADR proceedings are more streamlined and simpler than court cases. The absence of elaborate legal procedures and regulations enables a more efficient and quicker conclusion, saving significant time for all parties concerned.

ADR IN PRACTICE

Current Laws governing Alternative Dispute Resolution in India

Civil Procedure Code, 1908 has provisions for several ADR methods, including arbitration, mediation, and Lok Adalat. It authorizes the submission of particular complaints to ADR proceedings and specifies the procedures for their resolution. Section 89⁵³⁵, as well as Order 10, Rules 1A through 1C, provide for conflict resolution outside of court. The courts can also be authorized to refer a matter being dealt down into an alternative dispute resolution mechanism under Section 89 of Code with the

⁵³² Abdul Hasan and National Legal Service Authority vs. Delhi Vidyut Board and Others, (1999) 77 DLT 640

⁵³³ 3 S.C. TRIPATHI, ALTERNATIVE DISPUTE RESOLUTION SYSTEM (ADR) (2018).

⁵³⁴ WIPO, <https://www.wipo.int/amc/en/center/advantages.html#:~:text=Because%20of%20its%20private%20nature,decision%20makers%20for%20their%20dispute> (last visited Apr. 30, 2024)

⁵³⁵ THE CODE OF CIVIL PROCEDURE, 1908, § 89, No. 15, Acts of Parliament, 1908 (India).

assistance of all the parties connected in exchange towards keeping disputes away from languishing on court events. The law governing the arbitration process in India was governed by **The Arbitration Act of 1940** until it got replaced with the **Arbitration and Conciliation Act of 1996**. An exponential legislative development was witnessed regarding regulation of arbitration processes, appointment of arbitrators, enforcement of award and judicial involvement. The Act has the main objective of promoting arbitration as an alternative to court litigation which is expensive, time-consuming and not only impartial but also justiciable

The **Legal Services Authorities Act (1987)** provides for the establishment of legal service authorities at all levels to enhance rendering free and competent legal aid while encouraging access to justice through ADR mechanisms similarly. LSA's conduct Lok Adalat (people's courts) along with other ADR activities to settle conflicts, particularly those affecting marginalized and underprivileged groups in society. Furthermore, Section 6 of the **Mediation Act, 2023**⁵³⁶ allows the court to order mediation in any dispute involving compoundable offenses, including outstanding marital offenses. However, the court will take the conclusion of such mediation into further consideration. As a result, the provisions of the Mediation Act, 2023 permit and acknowledge the settlement of compoundable crimes in accordance with their restrictions.

Arbitration and conciliation law in India is constituted under **the Arbitration and Conciliation Act, 1996** which takes its base from UNICTRAL Model Law on international commercial arbitration. It is a complete legal statute for Arbitration, Conciliation and special court maintenance of award. The Act's key sections are the meaning and limitation of arbitration and conciliation, Jurisdiction and authority of arbitrators and conciliators, The

proceedings of arbitration and conciliation hearings, including the rules concerning evidence and protocol, Arbitral awards are recognized and enforced both domestically and internationally, Court involvement and judicial scrutiny of arbitration procedures.

In addition to these statutory frameworks, the Consumer Protection Act of 2019, the Companies Act of 2013, Industrial Disputes Act, 1947 and the Indian Evidence Act of 1872 encourage settlement of disputes through ADR proceedings rather than directly governing them. Furthermore, India has a number of institutional systems and agencies dedicated to the advancement of ADR, such as arbitration agencies like the Indian Council of Arbitration (ICA)⁵³⁷, the International Centre for Alternative Dispute Resolution (ICADR), and various chambers of commerce and industry which deal with arbitration and conciliation cases.

Case Studies

ONGC vs. Collector of Central Excise⁵³⁸ was a dispute between a government body and a public-sector enterprise. It was determined that the public undertaking would settle conflicts peacefully by collaborative discussion or via good offices authorized government agencies, or arbitration, so avoiding litigation.

In **Salem Bar Association v. Union of India**⁵³⁹, the Supreme Court directed that model guidelines for alternative dispute resolution be prepared, as well as mediation rules, under Section 89(2)(d) of the Code of Civil Procedure, 1908. The regulation is presented as "Alternative Dispute Resolution and Mediation Rules, 2003".

Sukanya Holdings Pvt. Ltd. v. Jayesh H. Pandya & Anr.⁵⁴⁰ The Supreme Court while deciding the case highlighted the importance of Lok Adalat (people's courts) for the promotion of ADR. The

⁵³⁶THE MEDIATION ACT, 2023, § 6, No. 32, Acts of Parliament, 2023 (India).

⁵³⁷ INDIAN COUNCIL OF ARBITRATION, <https://icaindia.co.in/about#:~:text=In%20addition%2C%20ICA%20is%20tasked,the%20different%20avenues%20of%20ADR> (last visited Apr. 30, 2024).

⁵³⁸ ONGC vs. Collector of Central Excise, (1995) Supp (4) SCC 541.

⁵³⁹ Salem Bar Association v. Union of India, (2005) 6 SCC 344.

⁵⁴⁰ Sukanya Holdings Pvt. Ltd. v. Jayesh H. Pandya, (2003) 5 SCC 531.

court stated that the judgments by Lok Adalat are actionable and executory.

In **Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co.**⁵⁴¹ the Supreme Court held the courts should be pro-arbitration and avoid intervening in the arbitration process. This meant upheld that the arbitration parties are independent of the courts and minimized the court involvement in arbitral awards.

In **K.K Modi v K.N Modi**⁵⁴², This case discusses the characteristics that define an agreement, specifically an arbitration agreement. According to the Court, a clause constitutes an arbitration clause only if it provides that the tribunal's ruling would be binding on all parties to the agreement.

ADVANCING JUSTICE THROUGH ADR

Justice may be defined as the principle of giving every man what he deserves, as opposed to causing pain or harm. It is either distributive (belongs to magistrates) or commutative (respects transactions that are prevalent among persons)⁵⁴³. However, there appears to be no clear definition of justice. The ADR method was initially created to expedite case resolution and provide high-quality justice. ADR is a method in which a third-party resolves issue. The major goal of ADR is to prevent dissatisfaction and inconvenience while also promoting the notion of "access to justice for all". In India, where millions encounter challenges to traditional legal systems are present, Alternative Dispute Resolution procedures shows to play an essential role in expanding access to justice. Because courts are expensive and time-consuming, many individuals cannot afford to attend to them, which is unjust. However, justice cannot be confined to a specific class of people and it must be available to all, regardless of economic

situation, and without prejudice. So, in order to secure justice for all segments of the population, ADR is the ideal answer. ADR additionally inspires foreigners to make investments in India and Indians to cooperate with foreigners, as in the event of a disagreement, they can seek International Commercial Arbitration. As a consequence, it guarantees that justice is available to everybody, while also encouraging individuals to speak up and fight for their rights. And preserves relations, enhances the likelihood that the same parties will reach an agreement and collaborate again, and assures parties that their information will be kept concealed. This is what justice really means: fast, simple, and cost-effective justice. This maintains a situation that is beneficial for all parties and encourages them to communicate and address their differences.

Despite the implementation of ADR has not ended up resulting in optimized access to justice, it has demonstrated potential as a method for providing access to justice. This needs political commitment to expand conflict resolution services to new sorts of cases and people, rather than simply aiming to save money in the judiciary. To use ADR as a tool to improve access to justice, legislators and policymakers must embrace three key features. First and foremost, ADR is a collection of quite distinct techniques that are appropriate for various types of conflicts. Second, ADR processes have distinctive characteristics that must be recognized and nurtured in order to gain the benefits of ADR. Third, collaborative interest-based procedures have the most promise because they provide the most viable alternative to the limits that exist in conventional civil litigation.

CONCLUSION

Last but not least, Alternative dispute Resolution plays an important role in enhancing access to justice in India by not just providing conflict resolution procedures that are readily available but also inclusive, and collaborative. All these

⁵⁴¹ Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co., (2010) 8 SCC 24.

⁵⁴² K.K Modi v K.N Modi AIR 1998 SC 1297.

⁵⁴³ VIA MEDIATION & ARBITRATION CENTRE, <https://viamediationcentre.org/readnews/MTQz/ADR-and-access-to-Justice#:~:text=ADR%20is%20a%20process%20where,quick%2C%20simple%20and%20accessible%20justice> (last visited May. 01, 2024).



ADR methods facilitate in a more fair and responsive judicial system by empowering the populations for choosing other methods thereby reducing court backlog, and also fosters ideas of peaceful resolution thus making sure justice is available to everyone irrespective of their place in society or others based on minority/background. To conclude, trust in ADR needs to be rebuilt and we need a wider perspective that ADR is not meant to substitute or undermine the existing legal system but simply provide another way of reducing redundant litigation plaguing our judiciary. As India has several legislations and Judicial pronouncements which promotes ADR mechanism, whenever India moves forward with legal reform and equitable societies, ADR will remain an integral part of efforts to improve access to justice and maintain the rule of law.

