

ROOTS OF ALTERNATIVE DISPUTE RESOLUTION IN INDIA: LEGAL ISSUES AND ANALYSIS— AN ANALYTICAL STUDY

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Abstract

A historical view of the progressive development of ADR in India exposes a systematic integration of the indigenous and professional systems of dispute resolution that serve to improve the realization of the right to recourse to the courts. In the following discussion, details of the historical background of ADR along with its metamorphic evolution of the traditional panchayati format into structured methods such as mediation, arbitration, conciliation, and Lok Adalat are also discussed. With legislative support from the Arbitration and Conciliation Act, 1996, and procedural support, including Section 89 of the Code of Civil Procedure, 1908, ADR has emerged as an important tool of the judicial system in India, easing problems of backlogged courts, high costs of litigation, and time-consuming procedures. However, ADR in India has restrictions on the enforcement of awards, intervention of courts, limited access to ADR, and questions on neutrality arising from arbitration. Using America and Britain's experience of ADR evolution, the study shows how Indian architecture might also be improved. These are limitations on courts' interference with ADR decisions; improved access to ADR procedures; higher professional standards for practitioners; and the use of technology and ODR to increase scope and influence. The approach taken here is to argue for ADR as a more sustainable solution for the justice delivery system to meet the needs of the Indian populace as it seeks timely, neutral, and culturally appropriate dispute resolution solutions.

Keywords: Alternative Dispute Resolution, Arbitration, Mediation, Conciliation, Lok Adalat, Arbitration, Conciliation, Online Dispute Resolution, Indian Legal System, Access to Justice

INTRODUCTION

ADR has thus come to play a very important role in the justice delivery system in India, as people need justice that can be accessed easily. Conventional legal processes that take a lot of time and are accompanied by numerous procedures do not satisfy the demand for time-efficient solutions and overloaded courts with numerous cases. Mediation, arbitration, conciliation, and negotiation, which comprise ADR, is a process of resolving disputes that are out of court but bear a highly structured approach. It goes further to offer the disputant a non-adversarial system that enhances solution-finding through negotiations, thus

offering the parties a more satisfying result. Further, ADR encompasses concepts such as neutrality, confidentiality, and party control over decisions and is less rigid than the court. However, ADR originates from the Indian subcontinent and reminds us of the oldest form of village courts called panchayats, which decided disputes based on compromise and not on rigid lawful justice. These steps clearly show the relevance of ADR as a tool that is now formally institutionalized in India and which is compatible with culture, ready to be used as a way of providing access to justice that does not burden the courts.⁵⁷⁸

The majority endorsement of the ADR has been

⁵⁷⁸ S. C. Tripathi, *Alternative Dispute Resolution System (ADR)* 200 (Central Law Publication, Allahabad, 3rd edn., 2018).

noted in India through the legislative and judicial reform initiatives of recent decades. Citation of laws like the 'Arbitration and Conciliation Act of 1996' show a good legal policy that conforms to international best practices but suits the Indian society and economy. This Act combines the arbitration laws and conciliation in India and uses the United Nations Commission on International Trade Law Model Law as its reference. Moreover, in cases such as *Booz Allen and Hamilton Inc. v. SBI Home Finance Ltd.*⁵⁷⁹, the judiciary has seen the effectiveness of ADR in cases where there is a huge backlog in the courts and the need to resolve disputes in an independent and time-bound manner quickly. This also discussed that the role of ADR in India is not stagnant and is transforming in light of modern advancements in legal and policy making. The charm towards ADR can be correlated with the fact that 'justice delayed is justice denied' to rectify both the bottlenecks of the traditional litigation process and build a justice system in India.

Although an emerging trend in legal practice globally and is not a formally recognized practice all over the world, it holds a significant ideological and sociological place in India. This study focuses on analysing the traditional justice system of India, which was stronger in the pre-British period and followed communities to solve the problems in synergistic ways through panchayats. These were informal means of operation that were smooth and cheap, using local practices and common agreements more so than legalities. In step with the change in India's legal environment, ADR management became more sophisticated, and it began to gain statutory endorsement to address the growing demand for speedy, efficient means of redress. The "Arbitration Act, 1940" and later the "Arbitration and Conciliation Act, 1996" brought a structured upturn of ADR mostly arbitration and conciliation in India, and aimed at independent or minimal reliance on law courts. ADR was

acknowledged not only as a form of justice but as a complementary part of the traditional judicial system in India. As mentioned before, domestic ADR has incorporated those standards, and our domestic consumers as well as international parties outweigh confidence in Indian arbitration as many international standards like UNCITRAL Model Law are followed in India.⁵⁸⁰

The essence of ADR in India is the perceived benefits flowing therefrom as an effective method of early resolution of disputes to avert the legal costs of a costly court litigation process, which indeed is adversarial. The legal system of India seems to have a burdening issue because a current stellar figure of forty-three million plus cases awaits its ruling in different courts. This burden makes it imperative that justice delivery provides for the use of other channels, thereby making ADR an essential component in the justice delivery system. They, therefore, promote contracts to be resolved peacefully by use of arbitration and through mediation and conciliation, all of which lightens the burden left on the courts and make justice easy to achieve. Additionally, ADR methods like mediation include talks and thus give the disputing parties a chance to work at resolving the problem beyond the legal remedy implied, so that the solution will be more lasting. It has been endorsed in leading cases such as "*Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd.*"⁵⁸¹ by the Supreme Court of India, stressing and promoting the adoption of ADR to avoid delays and congestive overloads of the courts. Further, subsidiary sections such as the Code of Civil Procedure, 1908 Section 89, which enshrines courts' referral of appropriate cases to ADR, bear testimony to the judiciary's huge support for ADR to allow the disputants to reap efficient justice. The need for ADR therefore goes beyond the concept of solving a particular dispute; the process has helped in developing a system that is diverse,

⁵⁷⁹ [2011] 5 SCC 532.

⁵⁸⁰ Shashank Garg, *Alternative Dispute Resolution: The Indian Perspective* 120 (Oxford University Press, New Delhi, 1st edn., 2023).

⁵⁸¹ [2010] 8 SCC 24.

adaptive, as well as efficient in addressing justice delivery in India.

HISTORICAL CONTEXT OF ADR IN INDIA

The history of ADR in India may be said to have originated from the country's culture and is perhaps as old as three thousand years. Old-fashioned processes of conflict-solving belong to the organized community administration and, particularly, the panchayat governance structure. It included village councils or panchayats sitting to listen and solve local grievances; justice delivered, though not always legal proper justice about which morality and social cohesion were often prioritized. These local forums worked according to traditional structures of law and ethics, and a chance was given to the two parties to sort out their differences without having to refer to the bureaucratic rules of law. Further, they offered stability to the community as the outcomes were agreed to by both parties, oftentimes involving compromise and more often than not the common good. Such indigenous methods well correlate with the foundational approach of present-day ADR, hence emphasizing the connection between ancient Indian practices and modern laws. Nonetheless, it was colonialism that brought major changes in India's indigenous systems of justice. Meanwhile, the British imposed their methods of laws, thus establishing a British structure. Court structure in India, where it was evident that the structure was mainly adverse, consequently the native Indian techniques of accommodations and settlements were fading out slowly.⁵⁸²

The colonial legal system introduced the Indian Penal Code, Code of Civil Procedure laws, and many other statutes where the existing structure of the Indian legal systems was altered to resemble British models. The British model was set up more as an opposition, in the sense of winning and losing cases, as opposed to even the traditional Indian procedure, where the idea was to arrive at a compromise that

would be acceptable to all the parties involved. However, the nature of ADR principles in Indians' various follow-ups showcased that the indigenous means were still active informally in rural regions of India. These effects superimposed colonial achievements in formal law as urban courts, which existed side by side with panchayats in rural regions. This dual system extended even after the independence, but due to the emergent realization in India that the only adversarial system has many weaknesses inherent in it, there have been renewed attempts to re-incorporate ADR within the legal mainstream. As a result, there was an emerging institutionalization of ADR in the modern world to achieve reasonable accommodation of the traditionalist values, the legally formalized system.

Evolution of ADR Mechanisms

India has also witnessed the transition of ADR mechanisms from traditional types to fit in with the formal structure that is compatible with international models. The practice of ADR was not institutionalized earlier; however, the concept of negotiation, mediation, or conciliation could well be traced to the basic village panchayats or caste panchayats, wherein emphasis has always been on reconciliation rather than punishment. These assemblies worked on the confidence of the public; they offered the ordinary people a fair and balanced justice. However, the development of ADR mechanisms got structure in post-independence India under the influence of the Indian legal system and an inclination towards conventional Indian legal culture and influence from the international legal system. As the global market opened with the increase in economic growth and cross-border deals, there was a growing demand for better, faster, and internationally recognized means of settling business disputes. Arbitration, and especially contractual arbitration, became one of the most favored means of settling contracts, especially international ones, since they are easily enforced between different jurisdictions,

⁵⁸² S. R. Myneni, *Alternate Dispute Resolution* 150 (Asia Law House, Hyderabad, 6th edn., 2024).

thanks to the New York Convention. Arbitration was gradually recognized as a part of the Indian legal system and became a decisive turning point from the adversarial litigation model. A strong imprint of colonial sources is visible in the current India ADR scenario; however, post-colonial India began to shift away from pure adversarial models gradually. The practical advancement of the formal ADR framework began with the passage of the 'Arbitration Act, of 1940' though the act has its demerits regarding enforceability, procedural streamlining, and coverage. India over the years witnessed judicial activism in favour of ADR as an effective means of dispute resolution LPC and courts promoting arbitration and conciliation in appropriate cases. In the case of *'Guru Nanak Foundation v. Rattan Singh & Sons'*⁵⁸³ cases, wherein the Court recognized a higher level of efficiency in arbitration as compared to traditional litigation. Ad hoc changes in the legal regime and India's increasing participation in international business further underlined the importance of the effective working of the ADR system, which gave rise to the enactment of the "Arbitration and Conciliation Act, of 1996." These laws were successfully enacted as legislation to modernize the Indian arbitration law and to put it in tune with other developed arbitration laws across the world to make arbitration more attractive and appealing as a mode of dispute resolution of both domestic as well as international origin.⁵⁸⁴

Key Legislation Promoting ADR

The "Arbitration and Conciliation Act, of 1996" becomes another significant change in India's ADR development; this Act helps to codify new laws on arbitration and conciliation in India. Urgent at that time, this Act was based on the UNCITRAL Model Law on International Commercial Arbitration and provided a more solid legal base for ADR by following legislation's

shortcomings and using a legal structure approach to resolutions. Perhaps one of the key accomplishments of the Act was the empowerment of the disputing parties; this was done by permitting the parties to make their own choices of the procedural rules, arbitrators, as well as the forum of dispute. Besides, it reduced the formality of arbitration processes and endeavoured to afford finality to the arbitral process as seen in "Section 5", which does not allow much interference by the courts. The Act also spelled out conciliation as another form of ADR and encouraged it together with arbitration. This legislative approach was not simply a procedural change of law; it was a shift in reasoning that brought ADR into the psyche of India and provided corporations with a responsible and effective means of civil redress that was not entwined with litigation.

Some other Indian laws and amendments concrete the country's adherence to ADR and enhance its position in the judicial system. Special emphasis should be placed on "Section 89 of the Code of Civil Procedure, 1908", according to which a court is supposed to look for an opportunity to attempt ADR before going to trial. This provision entails ADR within procedural law to allow the courts to transfer cases to work with other procedures to lessen the load and hasten dispute resolution. The usage effect of "Section 89" has been seen in precedents such as *"Salem Advocate Bar Association v. Union of India"*⁵⁸⁵, the Supreme Court reiterated the compulsory, declaratory obligation of courts to resort to ADR methods initially. Barring these areas, this integration has had the effects of popularizing ADR and enhancing confidence in its application as a genuine strategy to value-conscious traditional litigation. The change in Section 44 of the Commercial Courts Act and the imposition of pre-suit mediation for certain types of cases also reveal India's efforts towards active support of ADR, which increases its worth in the systems across the country. Thus, ADR today

⁵⁸³ [1981] 4 SCC 634.

⁵⁸⁴ Kush Kalra, *Alternative Dispute Resolution: Concepts and Method* 90 (Sultan Chand and Sons, New Delhi, 1st edn., 2024).

⁵⁸⁵ [2005] 6 SCC 344.

has emerged as a vibrant example of the Indian historical and cultural trends in conflict resolution and the latest trends in contemporary legal and economic reforms for the world, as a primary key to overhauling the cumbersome and archaic justice delivery system in India.⁵⁸⁶

TYPES OF ALTERNATIVE DISPUTE RESOLUTION

ADR stands for the average of techniques that offer different ways whereby parties can solve their issues besides the court. These methods are mediation, arbitration, conciliation, and Lok Adalat, and all alternative modes of dispute resolution have their peculiarities in features, procedures, and purposes concerning particular types of controversies. ADR devices have become essential tools in the Indian legal framework and provide fair and economical means for the resolution of disputes as against normal court proceedings. These implemented methods have various/unique characteristics that define their appropriateness depending on the nature of the conflict and the participants involved. The large adoption of ADR in India is seen as a sign of a shifting paradigm of seeking justice in a given case where the conflicts are being solved promptly and efficiently which is much needed by individuals and commercial parties alike. Every approach plays a great part in the Indian ADR perspective and thus serves a particular purpose in formulating an efficient effective, adaptable, and sensitive legal system that addresses the concerns of disputes extremely wisely.⁵⁸⁷

Mediation

Mediation constitutes a consensual, non-judicial, and non-binding process in which a third, impartial person, the mediator, helps the other contending parties in the conflict to agree. Hence, mediation is different from litigation or arbitration, where the parties fight it out and

come to a predetermined solution. The mediator helps the disputants to communicate, determine the real objectives, and help reach a workable solution by voluntary agreement, but does not make any decision. The process of mediation is usually quite relaxed, enabling the commentators, who are the parties involved, to freely elaborate on their concerns in a closed-door proceeding. It creates an atmosphere that is suitable for civil negotiations, which involve fending disputes emanating from individuals, business entities, and even families. In the Indian context, mediation has been emphasized, especially in family matters and commercial disputes, and courts have also opened up to Section 89 of the Code of Civil Procedure, 1908. In its recent judgment of *"Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd."*⁵⁸⁸, the Supreme Court of India has strongly encouraged the lower courts to refer those cases for mediation where appropriate, thus pointing to an increasing trend of mediation within the Indian legal system.

The main strength of mediation is that the parties have a better say in the process, thereby ending up with more realistic and longer-lasting solutions. Also, mediation is cheaper and faster compared with other procedures, thus enjoying its popularity among parties that do not wish to go to court. But there are some aspects that the India faces some challenges with mediation, such as that mediation is not obligatory. The decision-making process may revert to either formal litigation in a court of law if one party does not keep to the settlement or if a common decision cannot be arrived at, thus the process taking longer. In addition, cases could very well not be well suited to mediation, where, for example, there are highly contested issues of legal substance or fact, issues of the balance of power, or where the legal outcome is distinctly clear. However, the mentioned limitations are not able to overshadow the role and importance of mediation in assisting

⁵⁸⁶ Anupam Kurlwal, *An Introduction to Alternative Dispute Resolution System (ADR)* 180 (Central Law Publication, Allahabad, 4th edn., 2022).

⁵⁸⁷ Avtar Singh, *Company Law* 320 (Eastern Book Company, Lucknow, 17th edn., 2018, reprinted 2024).

⁵⁸⁸ [2010] 8 SCC 24.

reconciliation, decreasing the number of cases in the courts, and developing the non-justice approaches in India.

Arbitration

Arbitration is an administered ADR process in which the parties have consented to obtain a determination in a dispute by a neutral arbitrator or a panel of arbitrators who make a final decision. Mainly done under the “Arbitration and Conciliation Act, of 1996”, the arbitration exercised enables the parties to have arbitrators of their choice with adequate knowledge concerning the matter at hand. The arbitration process entails the filing of evidence, hearings, and final arguments and resembles a trial but with a considerable degree of freedom for the parties and procedural rules. Arbitration cannot, however, be confined to commercial disputes because this type of ADR is characterized by confidentiality and enforceability locally and internationally due to the New York Convention. The apex court of India, in *Oil & Natural Gas Corporation Ltd. V. Saw Pipes Ltd.*⁵⁸⁹, highlights the importance of arbitration. Its decision was a recognition of the finality of arbitration as a dispute resolution mechanism by stating that an award can only be challenged on limited grounds.⁵⁹⁰

That is why the given advantage is considered to be the primary one, as arbitration means an enforceable and binding decision, which confirms that a definitive solution is reached, unlike time-consuming litigation. In addition, arbitration deems it appropriate not to disclose information to the public, which is a benefit on its side. However, there are downsides to arbitration as well. High expenses, especially when the parties engage international arbitrators and other formalities, can make arbitration equivalent to the time and expenses of litigation. Also, if the party dissatisfied with the award decision feels that this was unfavourable, then they proceed to appeal, thereby resulting

in other legalities even though the chances for appealing are limited. However, the institution of arbitration remains useful as an ADR method, particularly for business matters, while providing or allowing for party control and procedural rationality in India’s developing ADR mechanism.

Conciliation

Conciliation is a non-judicial, non-adjudicative method where the disputing parties directly involved agree to work cooperatively with the help of a third neutral person professionally known as the conciliator to settle the dispute. This process also does not involve the imposing of outside decisions like in the mediation, and it is all about cooperation and the parties attempting to find a mutual goal and potential solutions. However, as opposed to mediators, the latter are engaged in providing more directions as to what the terms of settlement may include, which in turn leads parties to come to a joint resolution. There is legislation in place in India to recognize conciliation, dubbed the “Arbitration and Conciliation Act, 1996”, majorly concentrating on the commercial dispute, conceding the worth of conciliation as a versatile option that does not involve the atmosphere of a confrontation. Conciliation is popular these days in fields like consumer disputes, labour relations problems, and family matters where the relationship between the parties’ matters. Thus, the ratification of ‘conciliation’ by the Supreme Court in *Haresh Dayaram Thakur v. State of Maharashtra*⁵⁹¹ was also emphasized in further elaborating its use as an efficient means of ADR.

The major benefits of conciliation may be understood in the scopes such as relationship preservation and win-win solutions. It gives the parties the flexibility of contracting, making it different from formal contacts, and provides solutions that are normally acceptable to all the concerned parties. Further, it is also efficient regarding both time and costs to the parties in

⁵⁸⁹ [2003] 5 SCC 705.

⁵⁹⁰ M. V. Durga Prasad, *Commentary on The Commercial Courts Act, 2015* 280 (Asia Law House, Hyderabad, 7th edn., 2024).

⁵⁹¹ [2000] 6 SCC 179.

that they can expeditiously work out the conflict. However, there is no compulsion, which is the major drawback that may often result in non-enforcement of terms of settlement and again create conflicts or legal actions. Conciliation is also not suitable for those situations, which must be legally solved or, likely due to the factual disagreement, need a definite resolution. Nevertheless, conciliation is a useful ADR procedure in India, particularly for situations that cannot effectively be resolved through an adversarial approach but for which the focus must be on maintaining the parties' relationship.⁵⁹²

Lok Adalat (People's Court)

Lok Adalat, also known as 'People's Court,' is one of the most popular ADR techniques found in the context of developing countries like India, where the majority of the population is still struggling for their basic amenities. Lok Adalats are conducted under the provisions of the Legal Services Authorities Act of 1987 and by the National Legal Services Authority. These courts handle first-instance cases such as family, civil, and compoundable criminal, mostly focusing on compromise. Lok Adalats conduct their sitting from time to time, and with the intervention of the judge, lawyer, and social worker, the parties get to settle the matter by consent and make justice accessible to all citizens. The decisions made in Lok Adalats have the force of a civil court, and once a case has been finally settled in Lok Adalat, there is no right of appeal, as held in *"State of Punjab v. Jalour Singh"*⁵⁹³; Lok Adalats act as a rich, efficient ADR system, especially for the economically backward sections of society, and reflect the provision of justice for all as part of India's legal motto and as an attempt to shift the legal load off conventional courts.

LEGAL ISSUES SURROUNDING ADR IN INDIA

The adoption and implementation of ADR

mechanisms in the Indian system enhanced the justice delivery system by providing options that are comparatively swifter, less expensive, and possess a less antagonistic nature than traditional litigation. Nevertheless, the following legal problems remain regarding the implementation of ADR in India. Several legal problems persist that prevent ADR from achieving its full potential. These concerns include enforceability, judicial perceptions, accessibility, as well as neutrality. It formulates the problems within the ADR framework of India and accentuates the necessity for structural reforms to make the ADR procedure possible and dependable for each Indian lawyer and citizen. The issue of compliance with ADR awards, especially in arbitration, remains a reality. With the role of the courts in making or marring the processes leading to ADR. Nevertheless, awareness and accessibility are the key issues, that most people, especially those belonging to rural backgrounds or bordering on the realm of exclusion, cannot grasp or afford to undertake ADR. Questions of bias and imbalance also affect the use of ADR and concerns about bias within the process. To tackle these problems, it is necessary to advance an agenda that defends the principles of ADR but also guarantees that they entail positive outcomes for all segments of the population.⁵⁹⁴

Enforceability of ADR Awards

The issue of the ability and authority of a decision to be made as legally applicable is a crucial legal factor in ADR, especially in arbitration, where the statutorily conferred ability of an award offers a minimum guarantee that the disputing parties shall conform to the determination. Nevertheless, several difficulties could still be witnessed in making the award of the arbitration final even with clear provisions of the "Arbitration and Conciliation Act, of 1996." Indian courts have been somewhat dull when it

⁵⁹² Resolving Corporate Conflicts outside the Courtroom: A Study of ADR Mechanisms and the Companies Act in India, available at <https://ssrn.com/abstract=4814779> (last visited on October 10, 2024).

⁵⁹³ [2008] 2 SCC 660.

⁵⁹⁴ Garishma Dongre, "Role of Alternative Dispute Resolution in Corporate and Commercial Disputes", available at: <https://ssrn.com/abstract=4144301> (last visited on October 10, 2024).

comes to arbitration awards, even though the courts have often interfered with the arbitration process and have often and unnecessarily dragged out the process instead of expediting it. Under Section 34 of the Arbitration and Conciliation Act, 1996, the parties can challenge an arbitral award for certain limited grounds, procedural misconduct and violation of public policy. Despite their purpose of embarking on unfair results, these provisions have been discretely applied, causing prolongation of legal proceedings after the award. In *ONGC Ltd. v. Saw Pipes Ltd.*,⁵⁹⁵ which is dealt with later in detail, the Supreme Court took an all-embracing view of what constitutes 'public policy,' thus permitting increased judicial interferences and in effect rendering the 'finality' of the arbitration awards merely illusory.

The judiciary has, however, also been on the lookout for opportunities to restrain improper interference and to protect the sanctity of ADR awards. In *Venture Global Engineering v. Satyam Computer Services Ltd.*⁵⁹⁶, the Supreme Court urged that the recognition and enforcement of arbitral awards should be respected and dictum to refrain from interfering with the arbitral process unless it is perceivable that a patent injustice has been inflicted. Such judgments mean a tendency for the gradual recognition of ADR results; however, variation in the judicial analysis does impact enforceability. The judiciary's role in enforcing ADR awards needs clearer guidelines to make them less cumbersome and more efficient, especially in arbitration, where delay negates the exercise of choosing ADR. In addition, variation in judicial attitudes towards enforcement negatively influences the credibility of ADR procedures in India, especially among foreign participants who want secure arbitration bodies.

Role of the Judiciary in ADR

Supportive is the assistance and cooperation provided by the judiciary towards ADR, while on the other hand, it is a hindrance to the success

of ADR. It shall be pertinent to note that the Indian courts too have encouraged ADR as a practical solution to keep down the growing caseload, which has led to what we today know as 'Section 89 of the Civil Procedure Code, 1908' now compulsory mediation. It is recommended that, where possible, parties should opt for ADR, especially in Family law proponents and anticipates have always supported the use of ADR to resolve family law cases of dispute. Labor relations—Disputes arising out of contracts of employment—Courts have always encouraged parties to seek ADR solutions rather than taking an adversarial trial. In contract law disputes where parties are advised to settle out of court. Nonetheless, some other aspects within the judiciary have also been opposed to ADR, even in light of judicial support. Interference has therefore been realized mainly in arbitration which was expected to be a form of ADR by reason of its, emphasis in independent decision making and finality without resort to the conclusions of the courts. Judgments such as *Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd.*⁵⁹⁷ show the judiciary equally being active in supporting ADR, but the inconsistent judicial decisions thereafter in arbitration cases suggest a hidden reluctance of the judiciary to fully hand over the power into ADR techniques.

Furthermore, where the judiciary plays the twin role of a proponent and a regulatory authority of ADR, the process becomes charged with mechanics that may take so long instead of contracting time for resolution. In situations where the same judges try to mediate themselves, issues concerning impartiality and independence of the mediation process come to concern. The lack of a unified policy for the adoption of ADR across different levels of the judiciary makes its legal status incongruent, which arises out of the fact that higher courts may overturn decisions made by ADR as approved by lower courts. Thus, as the concept and practice of ADR continue to grow and

⁵⁹⁵ [2003] 5 SCC 705.

⁵⁹⁶ [2008] 4 SCC 190.

⁵⁹⁷ [2010] 8 SCC 24.

formalize in India, a healthier and less intrusive role for the judiciary is required; this must only step in to support where procedures are flagrantly unfair or unjust.⁵⁹⁸

Lack of Awareness and Accessibility

One of the main issues that must be addressed in connection with ADR in India is the absence of awareness and the difficulties involved in gaining full access to it, mainly in rural areas and among persons of lower social status, in terms of the availability of lawyers. While ADR reduces costs and improves accessibility, many clients lack awareness or access to these services. In rural areas of the country, traditional justice systems like the Panchayati Raj system are in practice, and these are not cast in formal ADR norms, and therefore the enforcement of justice is not uniform. However, there are certain shortcomings in these government measures, such as a small number of courts, namely the Lok Adalats, and insufficient frequency of hearings, all of which prevent the process of delivering justice to a large extent. There is also the problem of a lack of adequately trained mediators and arbitrators, which is especially an issue for many rural residents because many of the professionals in the field are not prepared to deal with ADR procedures, and as a result, people just avoid using these methods.

Also, the number of ADR centres and facilities is very few, and in most rural settings, there are no facilities that offer the service, thus making the rural client rely on the formal courts. This means that despite efforts that are made in the push towards the use of ADR, access to it is highly skewed, with likely those in urban areas benefiting most. These issues can be solved by creating and setting specific policies that would open new possibilities in ADR construction and escalation of awareness on the benefits of ADR among local mediators and arbitrators. When ADR is fully adopted and available, it will require

close coordination between operatives in legal aid organizations, governmental offices, and community leaders. More efforts should be made to reach out to the marginalized sections through increased funding to make it possible to extend these advantages of ADR to all its citizens where justice is needed and must be equally felt by all in the legal system of India.⁵⁹⁹

Issues of Neutrality and Impartiality

One of the core underpinnings of ADR is that the process and the person doing the process should be neutral and impartial, but achieving neutrality and impartiality is incredibly difficult, more so in private arbitration and mediation. Some concerns are made about the prejudice of arbitrators and mediators, especially when appointments are made by that particular party, which is usually the case in commercial cases. Issues such as these arise because, unlike judges, arbitrators and mediators may be privately appointed, thereby posing some doubts as to their bias, particularly where they had had previous dealings with the parties to the conflict. In the case of *“Indian Oil Corporation Ltd. v. Raja Transport (P) Ltd.”*⁶⁰⁰, the Hon’ble Supreme Court pointed out the bias factor in arbitration, but most importantly highlighted the importance of neutrality and independence of the arbitrator and therefore for the public to have confidence in each other.

However, in more cases, it remains unclear who can be chosen as an arbitrator or mediator, and there are no works established to study whether chosen people act by high ethical criteria. This has the potential downside of deterring parties from seeking ADR solutions, feeling that they will be disadvantaged in their negotiations on the tender process. Solving this problem means establishing strict standards and professional ethics for arbitrators and mediators, non-discriminatory appointments, and compulsory

⁵⁹⁸ Mahboob Ali, Brochure on Alternative Dispute Resolution Mechanism in Modern Indian Society, available at: <https://ijtr.nic.in/Alternative%20Dispute%20Resolution%20Mechanism%20inModern%20Indian%20Society.pdf> (last visited on October 12, 2024).

⁵⁹⁹ Analysing the Types of Disputes in Corporate Governance and Role of ADR in Dispute Resolution, available at: <https://articles.manupatra.com/article-details/Analysing-the-types-of-disputes-in-Corporate-Governance-and-Role-of-ADR-in-Dispute-Resolution> (last visited on October 13, 2024).

⁶⁰⁰ [2009] 8 SCC 520.

declarations of interest and bias. Awareness-promoting ethical benchmarks and professional practices contributes to improving the neutrality of training programs concerning ADR and writing trust between disputants. A greater emphasis on impartiality not only enhances ADR's legitimacy as a procedure but also brings ADR even closer to the ideals of justice and therefore keeps up with the practices in India offering a fair, unbiased method in comparison to conventional litigation.⁶⁰¹

CONCLUSION

Examining the development of ADR in India to foster the understanding of its credibility as a guardian companion to conventional litigation, culture-based practice supported by legislation and judiciary. ADR can be identified as the solution for addressing the excess load of cases in India and the opportunities it provides being accessible, flexible, and fast. The history of ADR is rooted in the panchayat system preferred and standardizing with contemporary international standards, as seen with the adoption of the UNCITRAL Model Law. The passage of most important statutes, such as the "Arbitration and Conciliation Act, of 1996", has led to a major shift towards arbitration, mediation, and conciliation as effective, orderly systems that take care of almost all forms of disputes, ranging from business-related matters to those involving communities.

However, ADR in India has its own set of problems connected with enforcement, judicial interference, rural access, and neutrality of the arbitrator in private arbitration. These concerns represent a limitation of the ability of ADR to reach its optimum level of performance, pointing to the likely need for changes in the instruments of ADR to render the awards more conclusive and take ADR to other higher levels. The comparisons with the USA and the UK exemplify what benefit could be derived by

India, such as uniformly enforced cost penalties and existing court-referred mediation systems. Technological advancement, especially through proper legal frameworks that allow the implementation of online dispute resolution (ODR) systems, is going to shape the future of ADR because it addresses issues of access and generally increases the rate of effectiveness.

Thus, for India, ADR still holds a future that can be stable and developed by accepting new technologies and making further reforms that will clear present disadvantages while including more parties to participate. In this way, ADR will be able to keep working for the benefit of India's legal system and deliver efficient, fair, and sustainable justice. This is especially necessary with the increasing population and a more diverse population base to ensure that ADR becomes the first option, a more reliable and affordable process for all sectors in India.

SUGGESTIONS

Thus, with the issues that ADR faces in India in mind, there are some specific reforms and several more comprehensive implementations that activate the processes of making it more effective and more open and trustworthy. Some of these have to do with the actual procedures of ADR, some on the balance of interests, some on how to achieve greater ADR availability, and some on utilizing modern technology.

- As has been suggested, the Arbitration and Conciliation Act, of 1996, should be amended to incorporate some antecedent of the recent decision on "public policy" grounds so as not to encourage future judicial interference. Such mechanisms for enforcement of awards in most commercial cases would mean that parties turn to arbitration with the confidence that the process as well as the award can be implemented without unnecessary delay.
- Drawing out clear checklists can strengthen finality where judicial

⁶⁰¹ Law of Arbitration in India & Alternative Dispute Resolution, available at: <https://www.lexology.com/library/detail.aspx?g=c74be5b9-f8c1-4d5a-ae87-936d0ca6de8b> (last visited on October 14, 2024).

involvement is made in ADR cases, particularly arbitration. Preliminary to this is the formulation of guidelines that would reduce the courts' active involvement in the resolution of disputes unless appeals of procedural and substantive injustice are properly made to enhance the acceptability of ADR as a formal means of decisively settling disputes.

- Expanding the scattered court-annexed mediation and conciliation towards all court levels can ease congestion. The possibility of awarding certain incentives to the parties who agree to undertake ADR or applying certain cost sanctions to the parties who refuse to do it under unjustified circumstances, such as in the UK model, can promote the greater use of ADR procedures and early dispute resolution.
- Regulating a code of ethics for the arbitrators and mediators and announcing the current list of appointment processes would look into the issues of bias. This would include declaring any self-interest and setting up an ethical watchdog to oversee compliance with ethical best practices, thus enhancing the stature of ADR professionals.
- The few ways that can make ADR more accessible include the construction of more ADR facilities, particularly in depressed/low-density areas, and the training of local mediators and arbitrators. Awareness programs involving the community with Legal Aid organizations can go a long way in enlightening the people about ADR, especially for those most vulnerable in society whose justice has been seen to be lacking.
- Developing standards for ODR and rules regulating the operative model of

hearings by using IT tools and operating with virtual negotiations will contribute to the development of ADR systems. This is particularly/especially applicable for cross-border cases that are located in remote areas where members cannot access courts physically and participate in ADR from any place.

- Using AI to generate information can help mediators and arbitrators in analysing patterns of cases, which in turn makes the resolution process better informed. Furthermore, while extending cybersecurity solutions to virtual ADR platforms, personal and secure information can be protected in the digital ADR context.
- This can make access to ADR professionals with quality certifications, but ensuring that such training and certification are mandatory can also be understood. That will create a professional practice of ADR and increase the confidence of the disputing parties, hence enhancing the role of ADR in the Indian system of justice.

These are some of the suggestions that, if incorporated, would enhance ADR and make it deliver an efficient and credible fast, fair, and sustainable solution to any dispute. This approach also tackles present issues for the future of ADR as a robust and reactive element of India's changing legal structure.