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ALTERNATIVE DISPUTE RESOLUTION(ADR) IN COMMERCIAL DISPUTES: EFFECTIVENESS AND CHALLENGES

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ABSTRACT

ADR in Commercial Disputes: Effectiveness and Challenges

This dissertation examines the effectiveness and challenges of Alternative Dispute Resolution (ADR) in resolving commercial disputes. The research objectives are to assess how effective ADR is in resolving such disputes and to identify the challenges that hinder its implementation. The study focuses on arbitration, mediation, and negotiation, with a global scope emphasizing jurisdictions like the U.S., UK, India, and Singapore.

Methodology: The research employs a literature review, case studies, and comparative analysis across different legal systems. The dissertation evaluates the strengths of ADR, such as efficiency, cost-effectiveness, flexibility, and enforceability, alongside its challenges, including lack of awareness, enforceability issues, bias concerns, power imbalances, and cultural resistance.

Key Findings: The study reveals that ADR offers significant benefits in terms of speed and cost savings compared to traditional litigation. However, challenges such as limited awareness among businesses and practitioners, cross-border enforceability issues, and perceived biases in arbitration/mediation processes hinder its widespread adoption.

Conclusions: The dissertation concludes by summarizing the effectiveness and challenges of ADR in commercial disputes. It addresses the research questions by synthesizing evidence from case studies and comparative analyses. Recommendations are proposed for stakeholders, including policymakers, businesses, and practitioners, to enhance the legal frameworks, invest in ADR training, and improve neutrality standards. Future research directions are also outlined, focusing on emerging trends like online dispute resolution.

This study contributes to the understanding of ADR's role in commercial disputes, providing insights for improving its effectiveness globally.

Keywords: Alternative Dispute Resolution, Commercial Disputes, Mediation, Arbitration, Enforceability of Arbitral Awards

CHAPTER 1: INTRODUCTION AND CONCEPTUAL FRAMEWORK IN ADR IN COMMERCIAL DISPUTES

ADR Types and Definition:

The phrase "alternative dispute resolution" (ADR) refers to processes for addressing issues outside of the normal legal system. ADR's major purpose is to make dispute resolution more

approachable, successful, and non-adversarial, especially in commercial contexts. The Arbitration and Conciliation Act, 1996¹²⁰⁵, which is based largely on the UNCITRAL Model Law on International Commercial Arbitration, creates ADR in India. Arbitration: In this process, competing parties present their case to an

¹²⁰⁵ The Arbitration and Conciliation Act, 1996

unbiased third party, termed an arbitrator, who issues a legally binding verdict. Important case laws like *Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc.* (2012)¹²⁰⁶ have reinforced the independence of arbitration in India. Section 2(1)(a) of the Arbitration and Conciliation Act, 1996¹²⁰⁷ defines arbitration as "any arbitration whether or not administered by a permanent arbitral institution." A neutral third person mediates disagreements between parties in order to help them come to a mutually agreeable resolution. With the enactment of Section 89 of the Code of Civil Procedure, 1908¹²⁰⁸, which encourages courts to refer problems to other venues like mediation, mediation gained popularity in India. Conciliation: Like mediation, conciliation uses a conciliator to help parties settle their issues amicably. Conciliation is especially promoted in business and industrial problems under Part III of the Arbitration and Conciliation Act, 1996¹²⁰⁹. The most informal ADR technique is negotiation, in which parties engage with one another directly to address conflicts without the intervention of a third party. This strategy is often utilised in cross-border business transactions and disputes originating from contracts. Adding to definition of commercial disputes is defined under clause (c) of sub-section (1) of section 2 of the Commercial Courts Act, 2015¹²¹⁰ and under section 3 clause (a) of Mediation Act, 2023¹²¹¹.

The Historical Evolution of ADR in Commercial Contexts

The requirement of society for more effective dispute settlement processes reflects in the evolution of alternative dispute resolution (ADR) in commercial issues. Commercial conflicts in ancient Greece, Rome, and India have been resolved historically using arbitration-like processes. Reflecting long-standing norms of community-based arbitration, the Panchayat

System served as a local conflict resolving tool in India.

Adoption of the Geneva Protocol on Arbitration Clauses (1923) and the New York Convention (1958) which granted arbitral rulings worldwide legitimacy and enforcement marked formalisation in the 20th century. Originally instituted in India in 1940 with the Arbitration Act, formal ADR was later updated in 1996 with the Arbitration and Conciliation Act.

Legal Foundations of ADR

Both national and international legal systems help one determine the legality of ADR:

- 1985 UNCITRAL Model Law: provides a consistent arbitration framework.
- The 1958 New York Convention ensures recognition and application for international arbitral rulings.
- The rules controlling both domestic and international arbitration are harmonised under the 1996 Indian Arbitration and Conciliation Act¹²¹².

The USA. Arbitration became a preferred method of globally settling conflicts thanks in part to the Federal Arbitration Act of 1925¹²¹³ and the UK Arbitration Act of 1996¹²¹⁴.

Legal decisions supporting the binding character of arbitral rulings in India include *Enercon (India) Ltd. v. Enercon GmbH* (2014)¹²¹⁵.

ADR Comparatively to Litigation in Commercial disputes

Particularly in regard to commercial disputes, ADR clearly offers advantages over litigation:

While litigation usually involves expensive legal fees, ADR reduces costs by means of simplified processes.

- Time: backlog of courts causes delays. Adversarial dispute guarantees timely resolution.
- Confidentiality: Although court events are public, alternative dispute resolution (ADR) provides seclusion necessary protection of confidential business data.

¹²⁰⁶ *Bharat Aluminium Co. v. Kaiser Aluminium Technical Service Inc.* 2012 9 SCC 552

¹²⁰⁷ The Arbitration and Conciliation Act, 1996

¹²⁰⁸ The Code of Civil Procedure (CPC), 1908

¹²⁰⁹ *ibid*

¹²¹⁰ The Commercial Courts Act, 2015.

¹²¹¹ The Mediation Act, 2023

¹²¹² *ibid*

¹²¹³ The Federal Arbitration Act (1925) – USA

¹²¹⁴ The UK Arbitration Act, 1996

¹²¹⁵ *ENERCON (INDIA) LTD. & ORS. v. ENERCON GMBH & ANR.* [2014] 2 S.C.R. 855

• Enforceability: Arbitral decisions rendered overseas are easier to enforce under the New York Convention.

Key rulings like *Oil & Natural Gas Corporation Ltd. v. Saw Pipes Ltd.* (2003)¹²¹⁶, which show the Indian court's stance on lessening intervention in arbitral rulings, support the independence of ADR processes. The broad name for a range of techniques and processes applied to resolve disputes outside of the official judicial system is ADR. The United Nations Commission on International Trade Law (UNCITRAL) defines ADR as means whereby parties may resolve conflicts in a more flexible and cost-effective manner than through litigation. Black's Law Dictionary defines ADR as "a procedure for settling a dispute by means other than litigation, such as arbitration or mediation." Section 89 of the Code of Civil Procedure, 1908¹²¹⁷, especially calls for the use of ADR procedures to settle conflicts, so strengthening Black's legal standing in the Indian setting. ADR covers a spectrum of methods, each appropriate for a given form of conflict and party interests.

There are mostly three groups:

Under this process, opposing parties agree to have one or more objective arbitrators whose decision is final heard over their dispute. Arbitration in India is controlled by the Arbitration and Conciliation Act, 1996¹²¹⁸ per line with the UNCITRAL Model Law.

Crucially, there are: Section 36 of the Arbitration and Conciliation Act states that the arbitral decision is enforceable as a court order.

- Neutrality: Participants have the choice to select arbitrators with suitable experience.
- Relevant Case Law: *Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc.* (2012)¹²¹⁹ made abundantly evident the extent of judicial involvement in arbitration processes. Mediation is a voluntary process whereby an unbiased third party guides conflicting parties towards a resolution that suits them both. The

mediator encourages debate rather than dictating a choice. Mediation in India has been much advanced thanks in great part to the Mediation and Conciliation Project Committee (MCPC) of the Supreme Court.

- Confidentiality: Procedures are kept private in order to guard personal space.

- Case Law: Mediating helps to clear the backlog of litigation, as the 2010 case of *Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co.*¹²²⁰ admitted in conciliation which is like mediation a neutral third party could actively suggest parameters of settlement. The 1996 Arbitration and Conciliation Act rules this process.

- Legal Framework: Section 61 to 81 of the Act define the conciliation process.

Any agreement reached is legally binding and enforceable.

Negotiating is the least official ADR method; it involves direct negotiations between parties to resolve conflicts free from third party intervention.

- Flexibility: Without a formal procedure, tailored solutions are feasible.

- Prevalence: Usually, the first step done before applying other ADR methods.

Arbitration, conciliation, mediation, and negotiating.

Development of ADR in Business Environment

In corporate environments, alternative dispute resolution (ADR) has evolved historically as societies search for more efficient, flexible, friendlier approaches to resolve problems outside of established legal systems. The roots of ADR can be discovered in prehistoric communities when unofficial conflict resolution mechanisms were rather frequent. These systems evolved over ages into organised processes embraced by modern legal systems.

Conventional Techniques and further Developments

ADR is not a brand-new concept; it has been in use in many forms from antiquity. In ancient India, Panchayats village councils composed of

¹²¹⁶ *Oil & Natural Gas Corporation Ltd. v. Saw Pipes Ltd.* (2003) AIR 2003 SUPREME COURT 2629

¹²¹⁷ The Code of Civil Procedure (CPC), 1908

¹²¹⁸ Arbitration and Conciliation Act, 1996

¹²¹⁹ *Bharat Aluminium Co. v. Kaiser Aluminium Technical Service Inc.* 2012 9 SCC 552

¹²²⁰ *Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co.* (2010) 8 SCR 1053

elders acted as conflict mediators, especially in cases involving trade, therefore serving as dispute resolution authorities. In Kautilya's (c. 4th century BCE) ancient Indian treatise on administration, The Arthashastra, arbitration and negotiation were underlined as means of settling trade conflicts. Confucian ideas promoted peace and social order in ancient China by means of mediation. With merchants or community leaders often acting as mediators, the Chinese concept of "Guanxi" (relationships) was crucial for amicably settling commercial conflicts. In ancient Greece, similarly, arbitration was preferred as a way to settle disputes between commerce and city-states. Under the name "compromissum," the Romans introduced arbitration processes into their legal system, effectively codifying them.

The Mediaeval Age and Evolution of Corporate Arbitration

Merchant guilds and trade associations developed self-regulating policies to rapidly resolve disputes as trade expanded throughout Europe and beyond during the Middle Ages. The need for quick and effective dispute settlement processes resulted in the development of the Lex Mercatoria (Law Merchant), body of commercial law used by traders to resolve cross-border disputes.

England first started to see development in arbitration throughout the seventeenth century. The Arbitration Act of 1697 is a significant piece of law granting arbitration agreements legal standing. Especially in trade guilds and maritime environments, arbitration became increasingly common over antiquity as a means of resolving business disputes.

Modern Era Institutions and Legal Recognition

In the 20th century, ADR processes became institutionalised and globalised. The formation of the International Chamber of Commerce (ICC)¹²²¹ in 1919 marked a significant turning point since it helped to open the path for the ICC International Court of Arbitration's 1923

foundation. This provided businesses with a methodical means of resolving conflicts across borders.

Growing globalisation and cross-border trade following World War II raised demand for consistency in arbitration practices. Consequently, the New York Convention on the Recognition and Enforcement of Foreign Arbitral Decisions was adopted in 1958 providing a structure for the worldwide execution of arbitral rulings. Another important advance was the 1985 UNCITRAL Model Law on International Commercial Arbitration, which aimed to unify international arbitration rules.

Evolution of India

Panchayats and Nyaya Panchayats, two ancient conflict settling mechanisms, show how long ADR has been used in India. But formalisation of ADR acquired pace with the passing of the Arbitration Act in 1940. The process was greatly streamlined when the Arbitration and Conciliation Act, 1996 passed concepts from the UNCITRAL Model Law. Past court decisions including *Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc.* (2012)¹²²² and *BCCI v. Kochi Cricket Pvt. Ltd.* (2018)¹²²³ have improved and clarified India's ADR legal system.

Worldwide Impact and Current Patterns

Globally, commercial dispute settlement is becoming to rely increasingly on ADR. Specialised arbitration centres established by many countries including the Hong Kong International Arbitration Centre (HKIAC), Singapore International Arbitration Centre (SIAC), and London Court of International Arbitration (LCIA) offer parties unbiased venues for conflict resolution.

In India, where companies like the Indian Council of Arbitration (ICA) and the Mumbai Centre for International Arbitration (MCIA) are vital in deciding how economic conflicts are resolved, institutional arbitration has also expanded rather dramatically.

¹²²¹ "Dispute Resolution - ICC - International Chamber of Commerce" (ICC - International Chamber of Commerce, January 30, 2025) <<https://iccwbo.org/dispute-resolution/>>

¹²²² *Bharat Aluminium Co. v. Kaiser Aluminium Technical Service, Inc.* 2012 9 SCC 552

¹²²³ *BCCI v. Kochi Cricket Pvt. Ltd.* 2018 (6) SCC 287

All things considered, the evolution of ADR in commercial environments represents a worldwide tendency towards more flexible, affordable, and business-friendly conflict resolution methods; the legal frameworks now controlling commercial ADR are based on historical traditions. From traditional court cases to modern ADR procedures.

The Legal Grounds of ADR

International treaties, model laws, national legislation, and court rulings taken together support the validity of alternative dispute resolution, or ADR. The legal system that supervises ADR guarantees its ordered implementation, legality, and enforcement. Examining these legal underpinnings closely exposes the national and international instruments influencing their development.

Frameworks for International Law

The United Nations Commission on International Trade Law (UNCITRAL) developed the Model Law on International Commercial Arbitration in 1985 in order to create a consistent legal basis for arbitration among many countries. Under the Model Law, thorough guidelines covering arbitration agreements, arbitrators' choice, arbitral procedures, and award execution are given. It was hoped to unify national arbitration rules by ensuring consistency and predictability in international corporate arbitration. One instance of how countries like India have included their principles into their own national legislation is the 1996 Arbitration and Conciliation Act. The 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Decisions is a main instrument for the global application of arbitration decisions. Having more than 170 signatories, it calls for all member states to accept and respect international arbitral rulings. The Convention reduces the risks connected with international trade and investment by ensuring that arbitral decisions rendered in one member state can be enforced in another, therefore strengthening cross-border commercial certainty.

Frameworks for National Law

The main piece of legislation controlling alternative dispute resolution (ADR) in India is the Indian Arbitration and Conciliation Act, 1996, which unified and changed rules pertaining to domestic arbitration, international commercial arbitration, and the enforcement of foreign arbitral awards. Mostly referencing the New York Convention and the UNCITRAL Model Law, this Act guarantees adherence to global best practices.

Important clauses consist of:

- Section 7: defines arbitration agreements.
- Section 34: Lists the causes behind possible overturn of arbitral decisions.
- Section 36: Treatments of arbitral decisions' execution akin to those of court orders
- Under Section 89 of the Civil Procedure Code (CPC), 1908, courts are urged to forward conflicts to alternative dispute resolution (ADR) procedures.

The Federal Arbitration Act (FAA) of the United States established a legal framework for arbitration agreements' execution and findings. The FAA affected not only the growth of arbitration in the United States but also the worldwide view of ADR. It increases the legally binding character of arbitration clauses in commercial contracts and limits judicial participation in arbitral processes. England, Wales, Northern Ireland are all covered by the UK Arbitration Act (1996). It goes over the courts' purposes, the parties' freedom, and how awards are administered. Emphasising party sovereignty and support of limited judicial intervention, the Act's pro-arbitration orientation is evident.

Legal precedents

Judicial opinions are necessary for one to grasp ADR laws and support their execution. Indian courts have been always upholding the dignity of arbitration agreements and arbitral rulings.

- Enercon (India) Ltd. v. Enercon GmbH (2014)¹²²⁴ reaffirmed party sovereignty and kept the

¹²²⁴ ENERCON (INDIA) LTD. & ORS. v ENERCON GMBH & ANR. [2014] 2 S.C.R. 855

legality of arbitration agreements. The Indian Supreme Court confirmed the parties' will to resolve conflicts by arbitration and the binding character of arbitral decisions.

• *Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc.* (2012)¹²²⁵ (BALCO): The Supreme Court decided that Indian courts could not meddle in arbitrations conducted abroad, therefore bringing India's arbitration law into line with international norms.

• *Fuerst Day Lawson Ltd. v. Jindal Exports Ltd.* (2001)¹²²⁶: Under the New York Convention, the court maintained the concept of limited judicial intervention by deciding that international arbitral rulings must be executed rapidly.

All things considered, the legislation controlling alternative dispute resolution (ADR) balance preserving procedural justice with promoting efficiency in corporate conflict resolution. These national and international legal frameworks, supported by court decisions, confirm ADR's reputation as a dependable and effective approach of resolving commercial problems. international systems including the UNCITRAL Model Law and the New York Convention.

National laws; examples include the U.S. Federal Arbitration Act and the UK Arbitration Act 1996¹²²⁷.

Commercial disputes: ADR versus Litigation

Because they offer several advantages over conventional litigation, alternative dispute resolution (ADR) processes are growingly popular for resolving corporate problems. Among the aspects where ADR stands different from litigation are cost, time, confidentiality, enforceability, and general procedural flexibility. Sometimes stated as the reasons litigation is so expensive include outrageous professional fees, court charges, and other minor expenses. Over the course of protracted legal conflicts, these expenses can climb rather dramatically. Conversely, ADR procedures including mediation and arbitration are supposed to lower these costs by streamlining procedures.

Usually divided between the parties, the fees of the arbitrator or mediator are less than those of protracted litigation. By use of arbitration, the parties can avoid expenses related to court filings, protracted hearings, and appeals.

Time: One major advantage of ADR is its quickness of resolution. Like many other legal systems, the Indian court system is heavily backlogged with cases, which results in protracted waits for rulings. The Economic Survey of India 2018–19 states that over 3.3 crore litigation were awaiting Indian courts at the time. Given its quicker results, ADR is a much-needed alternative. Arbitration procedures usually finish in one year, unlike litigation which can take years. Establishing a strict limit for arbitral tribunals in India to render decisions within a year of the commencement of proceedings, the Arbitration and Conciliation (Amendment) Act, 2015 reflects the growing focus on fast conflict resolution.

Another great advantage of ADR is the protection of sensitive company data under confidentiality. The public character of court hearings means that commercially sensitive information might be exposed. On the other hand, ADR ensures anonymity, which is particularly crucial for safeguarding trade secrets, financial data, and vital company knowledge. Section 75 of the Indian Arbitration and Conciliation Act, 1996 specifically grants the confidentiality of mediation procedures, therefore safeguarding the rights of the parties. Another area where ADR clearly shines is in the enforcement of arbitral rulings. India is a signatory to the 1958 New York Convention, therefore facilitating the acceptance and implementation of international arbitral rulings in almost 160 countries. This guarantees an easier implementation than court rulings. Global best practices dictate that Part II of the Arbitration and Conciliation Act, 1996 controls the application of foreign arbitral rulings in India. The *NAFED v. Alimenta S.A.* instance. (2020)¹²²⁸ reaffirmed that the Indian court will

¹²²⁵ *Bharat Aluminium Co. v. Kaiser Aluminium Technical Service, Inc.* 2012 9 SCC 552

¹²²⁶ *Fuerst Day Lawson Ltd. v. Jindal Exports Ltd.* (2001) 6 SCC 356

¹²²⁷ The UK Arbitration Act, 1996

¹²²⁸ *NAFED v Alimenta S.A. instance.* (2020) AIR 2020 SC 522

implement international arbitral verdicts so long as they line up with Indian national policy. Many important instances underline how the Indian court views alternative dispute settlement. In *Oil & Natural Gas Corporation Ltd. v. Saw Pipes Ltd.* (2003), the Supreme Court of India maintained the independence of arbitral tribunals by deciding that only specified reasons such as patent infringement or public policy violations could reverse arbitral decisions. The court curtailed the degree of judicial participation in arbitrations with foreign seats in *Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc.* (2012)¹²²⁹, therefore strengthening India's pro-arbitration posture.

Comparative Views: Long seen as a good substitute for litigation in nations including the US and the UK, ADR has The Federal Arbitration Act of United States and United Kingdom, 1925. Strong legal grounds backing arbitration and certainty of minimal court participation are offered under the Arbitration Act of 1996. These legal systems have affected India's legislative reforms as well as the commonly accepted method of conflict resolution that of arbitration. All things considered, in corporate issues ADR has several pragmatic advantages over litigation. Its affordability, time-efficiency, secrecy, enforceability, reduced court intervention, enable businesses looking for quick and cooperative solutions. Supported by court rulings, India's changing legal system shows how increasingly important ADR is as a basic tool for modern commercial conflict resolution.

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¹²²⁹ *Bharat Aluminium Co. v. Kaiser Aluminium Technical Service, Inc.* 2012 9 SCC 552