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Prasanna S,

Chairman of Institute of Legal Education

No. 08, Arul Nagar, Seera Thoppu,

Maudhanda Kurichi, Srirangam,

Tiruchirappalli – 620102

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

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THE ADR WAVE IN INDIA WITH SPECIAL EMPHASIS ON THE MEDIATION ACT, 2023 – GROWTH TOWARDS AN EFFICIENT LEGAL SYSTEM

AUTHOR - DEEKSHA JHA, LLM SCHOLAR AT UNIVERSITY SCHOOL OF LAW AND LEGAL STUDIES, GURU GOBIND SINGH INDRAPRASTHA UNIVERSITY

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LIST OF ABBREVIATIONS

S. No	Abbreviations	Full Form
1	ADR	Alternative Dispute Resolution
2	U.K	United Kingdom
3	U.S	United States
4	MAMA	Motor Accident Mediation Authorities
5	MCPC	Mediation and Conciliation Project Committee
6	NALSA	National Legal Services Authority
7	SIAC	Singapore International Arbitration Centre
8	LCIA	London Court of International Arbitration
9	ICA	Indian Council of Arbitration
10	MCI	Mediation Council of India
11	CPRL	Connaught Plaza Restaurants Ltd.
12	v.	Versus
13	SCC	Supreme Court Cases
14	SCR	Supreme Court Records
15	AIR	All India Reporter

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LIST OF CASES

S. No.	Name of the Case	Citation
1	Afcons Infrastructure Ltd. vs. Cherian Varkey Construction	[2010] 8 S.C.R. 1053
2	B.S. Krishnamurthy v. B.S. Nagaraj	AIR 2011 SUPREME COURT 794
3	Bharat Aluminium Co. v. Kaiser Aluminium Technical Service	Inc. 2010 1 SCC 72
4	Bhatia International v. Bulk Trading S.A.	(2002) 4 SCC 105
5	Booz Allen & Hamilton v. SBI Home Finance	(2011) 5 SCC 532
6	Future Coupons Pvt. Ltd. & Ors. v. Amazon.com NV Investment Holdings	(2022) 1 SCC 209
7	Government of India v. Vedanta Limited	(2020) 10 SCC 1
8	Himangni Enterprises v. Kamaljeet Singh Ahluwalia	(2017) 10 SCC 706
9	Hindustan Construction Company Ltd. v. NHAI	(2024) 2 SCC 613
10	Indus Biotech (P) Ltd. v. Kotak India Venture Fund- I	[2020] SCC OnLine NCLT 1430
11	K. Srinivas Rao v. D.A. Deepa	AIR 2013 SUPREME COURT 2176
12	LLC & Anr.	2022/DHC/005024
13	M.R. Krishna Murthi V. New India Assurance Co. Ltd.	[2019] 3 S.C.R. 1088
14	M/S Emaar MGF Land Limited vs. Aftab Singh	[2018] 14 S.C.R. 791.
15	Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.	473 U.S. 614 (1985)
16	Oil & Natural Gas Corporation Ltd. Vs. Saw Pipes Ltd.	2003 (5) SCC 705
17	ONGC Ltd. v. Saw Pipes Ltd.	AIR 2003 SUPREME COURT 2629.
18	Renusagar Power Co. Ltd. Etc. Vs General Electric Co.	[1993] Supp. (3) S.C.R. 22.
19	Salem Advocate Bar Ass'n v. Union of India	[2005] SCC 344
20	Ssangyong Engineering & Construction Co. Ltd vs. National Highways Authority of India (NHAI)	(2019) 7 S.C.R. 522
21	State of Punjab v. Jalour Singh	(2008) 2 SCC 660
22	Union of India v. Singh Builders Syndicate	(2009) 4 SCC 523
23	Venture Global Engineering v. Satyam Computer Services Ltd.	(2008) 4 SCC 190

24	Vidya Drolia & ors. vs. Durga Trading Corporation	[2019] 3 S.C.R. 465
25	Vijay Karia v. Prysmian Cavi E Sistemi SRL	(2020) 11 SCC 1
26	Vikram Bakshi v. Connaught Plaza Restaurants Ltd.	[2017] 140 CLA 142

ABSTRACT

The Indian legal system has long been burdened with a backlog of cases, necessitating the adoption of alternative dispute resolution (ADR) mechanisms to facilitate quicker and more cost-effective justice delivery. Over the years, ADR has evolved significantly, with arbitration, conciliation, mediation, and Lok Adalats playing a crucial role in reducing litigation pressure. Among these mechanisms, mediation has emerged as a preferred mode of dispute resolution, leading to the enactment of the Mediation Act, 2023, a landmark legislation aimed at institutionalizing and strengthening mediation in India.

Enacted on 14th September 2023, the Mediation Act is expected to enhance India's position as an ADR-friendly jurisdiction globally by providing a robust legal framework for mediation. While mediation has traditionally been an informal dispute resolution mechanism since the inception of Gram Panchayats, where community mediators played a role in resolving conflicts, this legislation marks a significant step forward in the institutionalization of mediation. Unlike earlier legal provisions that merely included mediation as a subset of ADR, the Mediation Act, 2023, elevates it to an independent and parallel status alongside the Arbitration and Conciliation Act, 1996, thus reinforcing its importance in the Indian legal landscape.

This dissertation provides a comprehensive analysis of the ADR wave in India, with a special emphasis on the Mediation Act, 2023. It traces the historical evolution of ADR, examines the legislative framework, and evaluates the effectiveness of mediation in reducing judicial pendency. The research also highlights key landmark judgments, including *Salem Advocate Bar Association v. Union of India (2005)*[1021] and *Vidya Drolia v. Durga Trading Corporation (2020)*[1022], that have shaped ADR jurisprudence in India.

A critical assessment of the Mediation Act, 2023, is undertaken, focusing on its salient features, such as mandatory pre-litigation mediation, online mediation, and community mediation. A unique feature of this act is the provision for urgent interim relief under special circumstances by a tribunal or court, ensuring that parties are not left without immediate recourse when required. Additionally, while mediated settlement agreements hold legal enforceability, they are open to challenge on grounds of fraud, coercion, impersonation, or non-compliance with Section 6 of the Act.

Furthermore, a comparative analysis of India's ADR framework with international models—such as Singapore's Mediation Act, 2017, and the United States' court-annexed mediation system—offers insights into best practices that could enhance India's mediation landscape. The dissertation concludes with policy recommendations, emphasizing the need for greater awareness, mediator training programs, technological integration (Online Dispute Resolution), and institutional reforms to establish mediation as a primary mode of dispute resolution.

[1021] Salem Advocate Bar Assn. V. Union Of India, (2005) 6 SCC 344
[1022] Vidya Drolia V. Durga Trading Corporation (2021) 2 SCC 1

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By evaluating the potential of the Mediation Act, 2023, this research underscores the growing significance of ADR in achieving an efficient, accessible, and time-sensitive legal system in India. The findings aim to contribute to ongoing discussions on legal reforms and dispute resolution mechanisms, advocating for a robust mediation culture that aligns with global best practices.

CHAPTER 1: UNDERSTANDING THE ADR WAVE IN INDIA

1.1 Introduction

Alternative Dispute Resolution (ADR) has been a cornerstone of conflict resolution across various civilizations, evolving from informal community-based practices to structured legal frameworks. This chapter delves into the historical context of ADR, tracing its roots from ancient India to classical Greece and Rome, and examines its resurgence and formalization in modern legal systems.

1.1.1 ADR in Ancient India

The juridical traditions of the Indian subcontinent rank among the most ancient globally, characterized predominantly by conciliatory approaches to conflict resolution rather than antagonistic methodologies. Early Indian societies conceptualized justice delivery primarily through frameworks anchored in dharmic principles and communal harmony, diverging significantly from retributive models. Governmental institutions frequently occupied subsidiary positions relative to community-oriented or professional association-based mechanisms, which emphasized reconciliatory practices, equitable outcomes, and deference to the accumulated wisdom of community elders.

During the Vedic chronological span (approximately 1500-500 BCE), conceptualizations of justice remained inextricably intertwined with dharma—understood as righteous obligation—as articulated within Shruti texts (the Vedic corpus) and Smriti compilations (codified legal precepts). Interpersonal or interfamilial disputes typically underwent resolution processes within familial or clan (kula) boundaries through interventions by senior members, who were culturally expected to maintain impartiality and demonstrate spiritual enlightenment. Contestations regarding property ownership, inheritance rights, and domestic affairs were initially addressed at the household echelon before potential escalation to broader community forums. The achievement of mutual agreement consistently superseded confrontational approaches, with various ritualistic practices or solemn declarations frequently employed as mechanisms for verifying testimonial veracity. Scholarly examinations suggest that during nascent phases of Indian civilizational development, family patriarchs functioned effectively as adjudicators in contentious matters, guided predominantly by dharmic interpretations rather than codified regulatory frameworks.

The emergence of Smriti literature—notably including Manusmriti, Yajnavalkya Smriti, and Narada Smriti—introduced greater codification to justice administration. Nevertheless, state-sponsored judicial forums (raja sabha) remained secondary options rather than primary recourse. Justice dispensation operated through a hierarchical arrangement of community-based institutions comprising three principal organizational structures: Puga (localized collectives representing diverse occupational and caste backgrounds, essentially functioning as neighbourhood administrative councils); Kula (extended familial networks); and Sreni (professional guilds and merchant associations). These institutions possessed quasi-judicial authority and maintained considerable autonomy in internal dispute resolution. Historical evidence indicates that ancient Indian governmental structures formally acknowledged these three varieties of community-based judicial forums, which administered justice through collective deliberative processes founded upon customary practices, moral principles, and community-derived consensus.

The Narada Smriti explicitly validated arbitration and mediation conducted by these institutions, establishing procedural guidelines for their operation. Provisions existed for appealing to royal courts when decisions were perceived as unjust or when institutional bias was evident. Dharmashastric texts actively promoted dispute settlement through Sadachara (established customary practices) and Nyaya (justice principles), frequently advocating for private arbitration processes before seeking redress through monarchical judicial systems.

Srenis[1023] achieved prominence during ancient and medieval Indian periods, especially throughout the Mauryan and Gupta dynasties. These guilds transcended purely economic functions, operating simultaneously as self-regulating judicial entities that resolved internal member disputes through arbitration processes while establishing their own behavioural regulatory frameworks. Historical analysis suggests that during the Mauryan period especially, Srenis exercised substantial judicial authority over their constituents, implementing decisions through community-sanctioned enforcement mechanisms.

Similarly, Pugas[1024] operated within urban environments as assemblies comprising professionals and residents from diverse caste backgrounds. These organizations played crucial roles in adjudicating localized disputes and enforcing regional customs through consensual decision-making processes that leveraged collective experiential wisdom.

Concurrent with these developments, Buddhist and Jain traditions established comprehensive internal mechanisms for addressing conflicts within both monastic and lay communities. The Buddhist Vinaya Pitaka delineates processes including Samukkasa (confessional practices), Patisaraniya Kamma (apology and forgiveness rituals), and Sangha-based determinations founded upon consensus principles. These traditions placed considerable emphasis on non-violent approaches, dialogic engagement, and penitential practices rather than punitive measures. Monastic regulatory systems codified within the Buddhist Vinaya Pitaka provide intricate procedural frameworks for dispute resolution cantered on confession, apologetic reconciliation, and community-facilitated reintegration. These procedures not only addressed internal monastic conflicts but substantially influenced broader societal perspectives regarding non-adversarial conflict resolution approaches.

The Panchayat system, while achieving more formalized development during later Vedic and medieval periods, traces its conceptual origins to the Sabhas and Samitis of early Vedic political structures. These assemblies, comprising elders or community representatives, administered justice according to customary norms and socio-ethical principles. Their methodological approaches closely resembled contemporary conciliation, investigative inquiry, and mediation practices. Panchayat determinations typically received uncontested acceptance due to the substantial social legitimacy these institutions commanded. Scholarly consensus suggests that traditional village panchayats evolved organically as governance institutions that simultaneously fulfilled judicial, administrative, and social regulatory functions.

These historical dispute resolution frameworks established foundational precedents for modern Alternative Dispute Resolution (ADR) systems in India. Contemporary institutions including Lok Adalats, Gram Nyayalayas, and indigenous tribal councils continue manifesting the values of consensus-building, equitable consideration, and morally-informed justice that characterized ancient systems. The current legal apparatus, despite substantial structural modelling on British adversarial precedents, has increasingly recognized the significance of non-litigious resolution methodologies—

[1023] Rohan Madhok, "A Study on the Evolution and Development of Law of Arbitration in India," (2021) 3(2) *International Journal of Law Management and Humanities* 2027.
[1024] Ibid.

not as innovative introductions but rather as revivals of indigenous traditions. The philosophical underpinnings of conciliation and collective justice, deeply embedded within India's legal heritage, provide a substantive cultural foundation supporting contemporary ADR movements.

This historical continuum demonstrates remarkable consistency in valuing community-based, conciliatory approaches to dispute resolution throughout Indian legal evolution. Despite substantial modifications through colonial interactions and post-independence legal reforms, the underlying philosophical preference for harmonious conflict resolution over adversarial confrontation persists as a distinctive characteristic of Indian juridical thought. Contemporary legal reforms increasingly acknowledge this historical legacy, incorporating traditional wisdom into modern procedural frameworks while adapting ancient principles to address contemporary challenges. This syncretic approach, blending historical precedent with current necessities, potentially offers valuable insights for developing more accessible, culturally responsive, and efficient justice delivery systems not only within India but potentially across diverse global contexts facing similar challenges of judicial accessibility and effectiveness.

1.1.2 ADR in Ancient Greece and Rome

Alternative methodologies for conflict resolution transcended geographical boundaries in antiquity, manifesting prominently within Hellenic civilization alongside their documented presence in the Indian subcontinent. Ancient Greece developed sophisticated extra-judicial mechanisms for addressing disputes that arose between autonomous polities and among private citizens. The Hellenic approach to non-adversarial conflict management reflected the complex socio-political organization of city-states and their interactions within the broader Mediterranean sphere of influence.

Arbitration emerged as a particularly favored methodology within the Greek context, serving crucial functions in maintaining stability between politically independent but economically interdependent city-states. When conflicts escalated beyond direct diplomatic resolution, respected individuals possessing substantial moral authority or specialized expertise were frequently designated as arbitrators. These appointees undertook comprehensive evaluations of competing claims before rendering judgments that typically established binding obligations upon all parties involved in the contestation. Archaeological and epigraphic evidence provides substantial documentation regarding this practice, with particularly noteworthy inscriptional records dating to 363 BCE that chronicle an arbitral proceeding involving the Salaminioi clan. This well-preserved historical record demonstrates the formalization and institutional acceptance of arbitration as a preferred dispute resolution mechanism in Hellenic society well before the Hellenistic period.

The arbitral tradition in ancient Greece developed distinct procedural characteristics that differentiated it from conventional judicial processes. Arbitrators frequently operated with greater procedural flexibility than state-sanctioned courts, allowing for contextual adaptation of resolution methodologies based on the specific nature of disputes. Additionally, the selection of arbitrators often incorporated considerations of specialized knowledge relevant to particular conflicts, essentially creating proto-expert determination processes for technically complex contestations. This approach recognized that certain disputes benefited from adjudicators possessing domain-specific expertise rather than generalized judicial knowledge.

Greek arbitration also manifested in several institutional variations, including both public and private forms. Public arbitration involved state-appointed individuals addressing matters of significant communal importance, while private arbitration permitted disputing parties to select mutually acceptable third-party interveners for more personalized conflicts. This bifurcated approach

demonstrates sophisticated recognition of how different categories of disputes might benefit from varied procedural frameworks based on their societal implications and complexity.

The Italian peninsula similarly developed refined approaches to extra-judicial conflict resolution during the Republican and Imperial periods of Roman civilization. Roman jurisprudential thought incorporated conciliatory practices and meditative interventions as integral components within their comprehensive legal framework. Rather than viewing these approaches as alternatives external to the formal legal system, Roman juridical philosophy integrated them as complementary elements within a holistic approach to social harmony and dispute management.

The Roman legal tradition formally acknowledged arbitration as a recognized juridical process with specific procedural requirements and enforcement mechanisms. Arbitrators, designated through mutual agreement among contesting parties, received empowerment to render definitive judgments in civil contestations that carried substantial authority. This practice achieved codification within seminal legal compilations, notably Justinian's monumental Digest produced between 530-533 CE, which explicitly recognized mediation as a legitimate methodology for dispute resolution. The Digest's recognition represents the culmination of centuries of evolving practice rather than an innovation, demonstrating how deeply embedded these approaches had become within Roman legal consciousness.

Roman approaches to non-adversarial dispute resolution demonstrated notable sophistication in their procedural differentiation. The juridical system distinguished between various forms of third-party intervention based on the intervener's role and authority. These distinctions created nuanced categorizations of resolution processes that acknowledged how different types of conflicts might benefit from varied intervention methodologies. Additionally, Roman practice recognized that certain categories of disputes particularly benefited from conciliatory approaches, including those involving ongoing commercial relationships or familial connections where preserving future interactions carried significant importance.

The evolution of alternative dispute resolution mechanisms in classical Mediterranean civilizations occurred within distinctive socio-political contexts that influenced their development and implementation. The Greek city-state system, characterized by autonomous political entities maintaining complex networks of economic and cultural interdependence, necessitated effective mechanisms for addressing inevitable frictions without resorting to destabilizing military confrontations. Arbitration provided a methodology that respected the sovereignty of individual polities while establishing mutually acceptable resolution frameworks, effectively balancing autonomy with interdependence.

Similarly, the expanding territorial control of the Roman Republic and subsequent Empire generated unprecedented jurisdictional challenges requiring flexible approaches to dispute management across diverse cultural and legal traditions. Roman pragmatism recognized that imposing rigid judicial uniformity across their expansive territories presented substantial logistical and political challenges. Alternative resolution methodologies provided practical mechanisms for addressing conflicts while acknowledging regional variations in normative expectations and customary practices.

The historical significance of these classical Mediterranean approaches to conflict resolution extends beyond their immediate temporal and geographical contexts. These early frameworks established conceptual foundations that would subsequently influence medieval European jurisprudence and eventually modern international arbitration protocols. Contemporary international arbitration institutions, despite their substantially greater procedural formalization, maintain recognizable

connections to these classical antecedents in their fundamental operating principles and underlying philosophical justifications.

Comparative analysis between Hellenic, Roman, and ancient Indian approaches to non-adversarial dispute resolution reveals intriguing parallels despite their independent development. All three civilizations recognized the limitations of exclusively adversarial approaches, particularly for specific categories of disputes where ongoing relationships required preservation. Additionally, each tradition acknowledged how specialized knowledge could enhance resolution quality in technically complex contestations, essentially presaging modern expert determination processes. These convergent developments across geographically separated civilizations suggest that recognition of adversarial limitations represents a recurrent insight within sophisticated legal systems rather than a culturally specific innovation.

Contemporary alternative dispute resolution scholarship increasingly acknowledges these historical foundations not merely as antiquarian curiosities but as valuable repositories of accumulated wisdom regarding effective conflict management. While modern procedural frameworks necessarily reflect current societal complexities and altered expectations, the underlying recognition that different dispute categories benefit from varied resolution methodologies remains unchanged. This historical continuity demonstrates how fundamental insights regarding human conflict persist across substantial temporal and cultural distances, even as their specific manifestations evolve to address contextual requirements.

The development of these refined approaches to dispute resolution within classical Mediterranean civilizations provides compelling evidence that sophisticated legal systems consistently recognize the limitations of exclusively adversarial methodologies. This recognition appears to emerge organically when legal systems achieve sufficient procedural maturity to differentiate between various categories of disputes based on their distinct characteristics and implications. This historical pattern suggests that contemporary emphasis on alternative dispute resolution represents not a revolutionary departure from traditional legal thought but rather a recurrent insight that consistently emerges within advanced juridical traditions.

Table no. 1 *- Historical Evolution of ADR in India and Beyond*

Period	Region	ADR Form/Practice
1500–500 BCE	Ancient India	Kula, Sreni, Puga (Clan/Guild Dispute Resolution)
500 BCE–500 CE	Buddhist/Jain Monastic Orders	Confessional & Apology Rituals
300 BCE–600 CE	Mauryan/Gupta India	Guild-based Arbitration (Sreni)
500 BCE–300 CE	Ancient Greece	Private/Public Arbitration by Elders
100 BCE–500 CE	Ancient Rome	Arbitration (Digest of Justinian)

Source: *Sharma, R. (2018). Historical Roots of Dispute Resolution in India and the West. Centre for Legal Traditions Research.*

1.1.3 Decline and Resurgence of ADR in India

Despite its effectiveness, the prominence of mediation and other ADR methods declined during British rule in India, leading to an increase in unresolved conflicts. The formal legal system introduced by the British favored adversarial litigation over traditional dispute resolution mechanisms.

However, recognizing the need for efficient and amicable dispute resolution, ADR has experienced a resurgence in modern India. The Industrial Disputes Act of 1947 prescribed detailed procedures for settling disputes out of court. Subsequently, the Legal Services Authorities Act of 1987 provided for the establishment of Lok Adalats (people's courts), further promoting mediation.

A significant development occurred with the amendment of the Code of Civil Procedure in 1999, introducing Section 89, effective from July 1, 2002. This section empowers courts to refer cases for settlement through arbitration, conciliation, judicial settlement, or mediation when elements of a settlement are present.

1.1.4 Contemporary ADR Practices

Today, ADR in India encompasses various methods such as arbitration, conciliation, mediation, and negotiation, offering alternatives to conventional court litigation. These processes provide decision-making avenues that avoid the adversarial nature of courts, aiming for amicable settlements. The global legal community, including judges, lawyers, and disputing parties, increasingly favors ADR due to its efficiency and effectiveness in resolving civil disputes.

Arbitral institutions play a crucial role in delivering ADR services, facilitating quicker, more cost-effective, and consensual resolutions outside the overburdened court system. ADR promotes open communication between parties, enabling them to address the underlying issues of their disputes. It has proven effective in various matters, including consumer complaints, family disputes, construction disagreements, and business conflicts. Essentially, ADR is applicable to almost any civil dispute that could be presented in a court of law.

1.2 Statement of Problem

The Indian legal system faces a severe backlog of cases, delaying access to justice and overburdening courts. Alternative Dispute Resolution (ADR) mechanisms, including arbitration, conciliation, and mediation, have emerged as effective tools to resolve disputes efficiently. Among these, mediation has gained prominence as a cost-effective, time-saving, and non-adversarial approach, allowing parties to reach mutually agreeable settlements outside traditional litigation. However, despite its growing acceptance, mediation in India lacked a comprehensive legal framework, leading to inconsistent practices and enforceability concerns.

Recognizing the need for structured reform, the Mediation Act, 2023, was enacted on 14th September 2023 to institutionalize mediation and promote India as an ADR-friendly jurisdiction. This legislation seeks to streamline mediation procedures, mandate pre-litigation mediation, and establish enforceable mediated settlements, thereby enhancing its credibility within the legal system. The Act also introduces online mediation and community mediation, making dispute resolution more accessible. Additionally, it provides for urgent interim relief in special cases and allows mediated settlements to be challenged under limited grounds such as fraud, coercion, impersonation, and procedural non-compliance.

While the Act is a progressive step toward ADR development, its implementation presents several challenges. Lack of awareness, resistance from legal professionals, gaps in mediator training, and infrastructural limitations hinder its widespread adoption. Moreover, ensuring the enforceability of mediated agreements remains a concern, as parties may attempt to circumvent settlements through legal loopholes. The role of courts in facilitating mediation, the reluctance of certain stakeholders, and the need for harmonization with existing laws such as the Arbitration and Conciliation Act, 1996, further complicate its practical application.

This research seeks to critically analyze the growth of ADR in India, with a particular focus on mediation as a dispute resolution mechanism. By evaluating judicial interpretations, landmark cases, and global best practices, the study aims to assess the effectiveness of the Mediation Act, 2023 and its role in fostering a more efficient, accessible, and just legal system. Furthermore, it explores the challenges in implementation and enforcement while proposing policy recommendations to strengthen mediation in India. Through this analysis, the research contributes to the evolving discourse on legal reforms, dispute resolution mechanisms, and the future of ADR in India.

1.3 Object and Utility

The backlog of cases in Indian courts underscores the need for Alternative Dispute Resolution (ADR) mechanisms to enhance judicial efficiency. Mediation has long been a part of India's dispute resolution culture, dating back to Gram Panchayats, but lacked formal recognition. The Mediation Act, 2023, enacted on September 14, 2023, institutionalizes mediation as an independent dispute resolution method, placing it on par with arbitration. This study critically examines the evolution, implementation, and future impact of ADR in India, with special emphasis on the Mediation Act, 2023, while incorporating global best practices.

The research evaluates the Act's key provisions, including pre-litigation mediation, online mediation, and community mediation, along with its effectiveness in reducing judicial pendency. It also analyzes judicial trends and landmark judgments that have shaped mediation in India and compares India's mediation framework with global models, such as those in Singapore, the U.K., and the U.S. The study further identifies challenges in implementation and recommends policy reforms to strengthen mediation as a preferred dispute resolution mechanism.

Objectives of the Study

1. To Examine the Legal Framework Governing ADR and Mediation in India: Analyzing the evolution of ADR, existing legal provisions, and the Mediation Act, 2023, in relation to other laws such as the Arbitration and Conciliation Act, 1996.
2. To Assess the Effectiveness of the Mediation Act, 2023: Evaluating the Act's impact on dispute resolution, focusing on pre-litigation mediation, enforceability of settlements, and the role of community and online mediation.
3. To Identify Challenges in Implementing Mediation in India: Exploring barriers such as lack of awareness, institutional limitations, and judicial intervention that hinder the adoption of mediation.
4. To Analyze Judicial Trends and Landmark Judgments: Examining key Supreme Court and High Court rulings that have influenced the legal standing and effectiveness of mediation.
5. To Conduct a Comparative Study of Mediation Laws in Other Jurisdictions: Comparing India's mediation framework with international best practices to identify potential improvements.

6. To Evaluate the Need for Legal and Policy Reforms: Highlighting shortcomings in the mediation framework and proposing reforms for greater accessibility, efficiency, and institutional support.
7. To Provide Recommendations for Strengthening ADR in India: Suggesting strategies for effective implementation, including regulatory enhancements, technological integration, and judicial oversight.

This research contributes to the evolving discourse on ADR by assessing the Mediation Act, 2023, identifying key strengths and limitations, and proposing reforms to establish India as a global leader in mediation.

1.4 Research Questions

To explore the topic comprehensively, the following research questions will guide the analysis:

1. How has the enactment of the Mediation Act, 2023, influenced the adoption and effectiveness of mediation as a primary dispute resolution mechanism in India?
2. What are the key challenges in implementing the Mediation Act, 2023, and how do they impact the accessibility, enforceability, and efficiency of mediation in India?
3. How does India's mediation framework compare with global best practices, and what legal or policy reforms can enhance its effectiveness?

1.5 Hypothesis

The Mediation Act, 2023, significantly strengthens India's ADR framework by institutionalizing mediation, improving accessibility, and reducing judicial pendency. However, its effectiveness depends on proper implementation, awareness, and infrastructure, which require further policy reforms and judicial support.

1.6 Review of Literature

1.6.1 Articles

Parinaz Fanibanda and Palak V. Mehta's article, "A Critical Study of Arbitration Laws through Years: 1940–2019," offers a comprehensive analysis of the evolution of arbitration laws in India over nearly eight decades. The authors trace the development from the Arbitration Act of 1940 to the Arbitration and Conciliation Act of 1996, highlighting key legislative amendments and judicial interventions that have shaped the arbitration landscape. They emphasize the shift towards a pro-arbitration stance, aligning with international standards and practices. The study also examines the role of Indian courts in facilitating arbitration, noting significant rulings that have reinforced the autonomy of arbitral tribunals and minimized judicial interference.

Anurag K. Agarwal's article, "Arbitration and Conciliation (Amendment) Act, 2015: Arbitrators and Conflict of Interest," critically examines the 2015 amendments to India's Arbitration and Conciliation Act, focusing on the enhanced disclosure requirements for arbitrators. Agarwal highlights the introduction of the Fifth and Seventh Schedules, which outline specific grounds for ineligibility and necessitate written disclosures regarding potential conflicts of interest. This aligns with international standards, such as the IBA Guidelines on Conflicts of Interest in International Arbitration, aiming to bolster the impartiality and transparency of arbitral proceedings in India.

In her 2019 article, "Quality Assurance in Alternative Dispute Resolution," published in the Indian Journal of Arbitration Law, Mehra examines the evolving landscape of ADR in India, emphasizing the need for quality assurance mechanisms to enhance the credibility and effectiveness of ADR processes. She discusses the challenges faced by ADR systems, including inconsistencies in mediator qualifications, lack of standardized procedures, and limited public awareness. Mehra advocates for the

establishment of regulatory frameworks, training programs, and accreditation bodies to ensure high standards and build trust in ADR mechanisms.

Frank E.A. Sander's 1985 article, "Alternative Methods of Dispute Resolution: An Overview," offers a foundational analysis of the U.S. ADR landscape. Sander examines mechanisms like mediation, arbitration, and negotiation, advocating for a flexible, case-specific approach to dispute resolution. He introduces the "multi-door courthouse" concept, proposing that courts direct cases to the most suitable resolution method based on their characteristics. This paradigm shift emphasizes efficiency, cost-effectiveness, and tailored justice, significantly influencing the integration of ADR into the American legal system. Sander's insights continue to guide ADR practices, underscoring the importance of matching disputes with appropriate resolution processes.

Noone and Ojelabi in their article, "Alternative dispute resolution and access to justice in Australia" (2020) examine the expansion of alternative dispute resolution (ADR) in Australia over the past four decades, focusing on its impact on access to justice. They assess whether ADR processes equitably serve all community members, particularly the disadvantaged, and the nature of justice these processes deliver. The authors emphasize the importance of aligning ADR mechanisms with legislative objectives and tailoring them to the specific context of disputes. They advocate for ongoing, rigorous evaluations to ensure ADR initiatives genuinely enhance access to justice, highlighting the need for thoughtful design and implementation that considers dispute types, involved parties, and available resources.

1.6.2 Judgments

In the landmark case of Vidya Drolia v. Durga Trading Corporation[1025], the Supreme Court of India addressed the arbitrability of disputes under the Transfer of Property Act, 1882. The Court concluded that landlord-tenant disputes governed by this Act are arbitrable, reasoning that such disputes pertain to personal rights between the parties and do not affect third-party rights or public interests. The judgment also emphasized minimal judicial intervention at the referral stage, stating that courts should primarily assess the existence of a valid arbitration agreement and leave most other issues, including questions of arbitrability, to the arbitral tribunal.

The Salem Advocate Bar Association v. Union of India[1026] case is a landmark judgment that addressed the constitutional validity of amendments made to the Code of Civil Procedure (CPC) by the Amendment Acts of 1999 and 2002. The Supreme Court upheld these amendments, emphasizing the need for effective implementation, particularly concerning Section 89, which promotes Alternative Dispute Resolution (ADR) mechanisms. In its judgment, the Court recognized potential practical challenges in implementing the amendments and constituted a committee led by Justice M. Jagannadha Rao to formulate model rules and case management strategies. This initiative aimed to ensure that the amendments would lead to a more efficient dispensation of justice.

In the 2019 case M.R. Krishna Murthi v. New India Assurance Co. Ltd.[1027], the Supreme Court highlighted the need to consider a victim's future potential when determining compensation. The Court also recommended establishing Motor Accident Mediation Authorities (MAMA) to expedite claim resolutions. However, there's a lack of empirical studies evaluating the effectiveness of mediation in motor accident claims following this judgment. Long-term studies tracking outcomes of cases settled through proposed mediation channels are also missing. Additionally, comparative analyses between

[1025] Vidya Drolia V. Durga Trading Corporation (2021) 2 SCC 1
[1026] Salem Advocate Bar Assn. V. Union Of India, (2005) 6 SCC 344
[1027] M.R. Krishna Murthi V. New India Assurance Co. Ltd., [2019] 3 S.C.R. 1088

jurisdictions that have implemented mediation in motor accident claims and those that haven't could offer valuable insights but are currently limited.

1.6.3 Key Gaps in Literature

- Empirical Analysis: While the literature extensively covers the theoretical aspects and judicial reasoning of the case, there's a noticeable lack of empirical studies assessing the real-world impact of these amendments on the efficiency of civil litigation in India.
- Comparative Studies: There's limited research comparing India's approach to ADR and case management post this judgment with other jurisdictions that have implemented similar reforms.
- Longitudinal Studies: The literature lacks longitudinal studies tracking the effectiveness of these reforms over time, which could provide insights into their sustainability and areas needing further improvement.

1.7 Research Methodology

This dissertation adopts a doctrinal research methodology to critically examine the evolution, legal framework, and judicial interpretation of Alternative Dispute Resolution (ADR) in India, with a special focus on the Mediation Act, 2023. The study systematically analyzes relevant legislative provisions, judicial precedents, regulatory mechanisms, and implementation challenges related to ADR and mediation in India. This approach enables a structured evaluation of the historical development, theoretical underpinnings, and practical implications of mediation as a dispute resolution mechanism.

A comprehensive review of statutory provisions governing ADR in India will be conducted, with a focus on laws such as the Arbitration and Conciliation Act, 1996, the Code of Civil Procedure (Section 89), the Legal Services Authorities Act, 1987 (Lok Adalats), and the Mediation Act, 2023. The study will assess the effectiveness of these legal frameworks in promoting timely, cost-effective, and accessible dispute resolution mechanisms. Mediation, which was traditionally an informal method of conflict resolution, has now been given statutory recognition through the Mediation Act, 2023. The research will examine how this law places mediation on equal footing with arbitration and conciliation, thereby strengthening India's reputation as an ADR-friendly jurisdiction.

Furthermore, an in-depth analysis of landmark judicial pronouncements that have shaped mediation jurisprudence in India will be undertaken. Cases such as *Salem Advocate Bar Association v. Union of India (2005)*[1028] and *Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (2010)* have played a significant role in defining the scope and applicability of mediation. Other judgments, including *K. Srinivas Rao v. D.A. Deepa (2013)* and *M.R. Krishna Murthi v. New India Assurance Co. Ltd. (2019)*[1029], have emphasized the importance of mediation in specific legal disputes such as matrimonial conflicts and consumer protection matters. The research will evaluate how these judicial interpretations have paved the way for a structured mediation framework in India.

A comparative legal analysis will be conducted to assess how different jurisdictions have developed their ADR and mediation frameworks. Countries such as Singapore, the United States, and the United Kingdom have successfully implemented efficient court-annexed and institutional mediation systems. By studying best practices from these international models, the research aims to evaluate how India's legal system can further enhance mediation adoption, mediator training, and enforceability of mediated settlements. Understanding how global best practices have led to

[1028] Salem Advocate Bar Assn. V. Union Of India, (2005) 6 Scc 344
[1029] M.R. Krishna Murthi V. New India Assurance Co. Ltd., [2019] 3 S.C.R. 1088

successful mediation cultures will provide insights into how India can strengthen its institutional mediation infrastructure.

The dissertation will also incorporate an analysis of policy reports from government bodies, legal commissions, and regulatory agencies, including reports from the Law Commission of India, the Supreme Court Mediation and Conciliation Project Committee (MCPC), the National Legal Services Authority (NALSA), and the NITI Aayog on ADR and legal reforms. These sources will provide statistical data, policy recommendations, and insights into the ongoing efforts to improve dispute resolution mechanisms in India.

The research primarily relies on secondary sources, including legislative texts, academic commentaries, judicial pronouncements, policy papers, and international legal frameworks. A comparative and critical approach will be used to evaluate the efficacy of existing mediation laws, identify implementation challenges, and propose policy reforms aimed at strengthening ADR in India. By adopting a doctrinal research approach, this study seeks to provide a comprehensive legal analysis of the Mediation Act, 2023, its impact on dispute resolution efficiency, and its potential to transform India's legal system into an ADR-centric model. The findings will contribute to ongoing discussions on legal reforms, judicial efficiency, and the future of mediation in India.

1.8 Chapterisation

Chapter 1: Introduction

This introductory chapter sets the foundation for analyzing Alternative Dispute Resolution (ADR) in India, with a focus on the Mediation Act, 2023. It traces the evolution of mediation from traditional Gram Panchayats to modern legal frameworks, highlighting its role in reducing judicial backlog and promoting access to justice.

The chapter defines mediation within ADR, explores its legal recognition, and examines the constitutional and policy justifications for its adoption. It introduces key research questions, including the Act's impact on institutionalizing mediation and its alignment with global best practices. The hypothesis suggests that the Act marks a significant shift in India's legal landscape by establishing mediation as a parallel dispute resolution mechanism.

Chapter 2: Legal Framework Governing ADR in India

This chapter examines the legal framework governing ADR in India, outlining key statutes that shape its implementation. It explores the Arbitration and Conciliation Act, 1996, the Code of Civil Procedure, 1908 (Section 89), the Legal Services Authorities Act, 1987, and the Consumer Protection Act, 2019, highlighting their role in institutionalizing arbitration, mediation, and conciliation.

The chapter also assesses the judiciary's role in ADR promotion, focusing on landmark rulings and tribunal-led initiatives. Additionally, it examines international conventions such as the UNCITRAL Model Law, New York Convention, analyzing their influence on India's ADR landscape.

Chapter 3: The Mediation Act, 2023 – A Paradigm Shift

This chapter examines the Mediation Act, 2023, a landmark legislation aimed at institutionalizing mediation in India. It explores the Act's enactment, objectives, and key provisions, including mandatory pre-litigation mediation, online and community mediation, enforcement of settlement agreements, and confidentiality safeguards. The Act also introduces urgent interim relief provisions and specifies grounds for challenging mediated settlements, ensuring procedural fairness.

A comparative analysis with the Arbitration and Conciliation Act, 1996, highlights how the new law elevates mediation as an independent ADR mechanism rather than a mere subset of conciliation. The

chapter further assesses the Act's impact using secondary sources, including reports from the Supreme Court Mediation and Conciliation Project Committee (MCPC) and the Law Commission of India, evaluating its potential to strengthen India's ADR framework.

Chapter 4: Landmark Judgments Shaping Mediation Jurisprudence in India

This chapter examines key judicial pronouncements that have defined mediation's legal standing and shaped its evolution in India. Landmark cases such as *Salem Advocate Bar Association v. Union of India (2005)* upheld ADR's validity under Section 89 CPC, while *Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (2010)* classified disputes suitable for mediation. In *K. Srinivas Rao v. D.A. Deepa (2013)*, the Supreme Court emphasized mediation in family disputes, and *M.R. Krishna Murthi v. New India Assurance Co. Ltd. (2019)*[1030] recommended a comprehensive mediation law, culminating in the Mediation Act, 2023. *Vidya Drolia v. Durga Trading Corporation (2020)*[1031] further strengthened ADR's role in contractual matters.

The chapter also analyzes judicial trends in enforcing mediated agreements, assessing their legal validity and enforceability. Additionally, it evaluates the effectiveness of court-annexed mediation programs in reducing judicial pendency, reinforcing mediation as a mainstream dispute resolution mechanism in India.

Chapter 5: Comparative Study of Mediation Laws – India and Global Perspectives

This chapter provides a comparative analysis of mediation laws across key jurisdictions, evaluating global best practices and their relevance to India's Mediation Act, 2023. It examines Singapore's institutionalized mediation model, the United States' court-annexed mediation system, the UK's approach to commercial disputes, and the European Union's mediation framework.

By assessing international legal frameworks, enforcement mechanisms, and policy approaches, the chapter identifies best practices that India can adopt to strengthen its mediation landscape. A comparative evaluation of the Mediation Act, 2023, against global standards highlights its strengths and areas for improvement.

Chapter 6: Recommendations and Conclusions

This concluding chapter summarizes the evolution and effectiveness of mediation in India, assessing its role in enhancing access to justice and reducing litigation burden. It evaluates the Mediation Act, 2023, analyzing its judicial interpretations and practical implementation while comparing it with global mediation frameworks.

The chapter proposes key reforms to strengthen mediation, including judicial and legislative support, enhanced legal education, increased public awareness, and structured mediator training programs. It also highlights the role of public-private partnerships in institutionalizing mediation.

Finally, the chapter emphasises on mediation's potential to transform India's legal system into an ADR-centric model, positioning it as a globally competitive, efficient, and accessible dispute resolution mechanism.

[1030] M.R. Krishna Murthi V. New India Assurance Co. Ltd., [2019] 3 S.C.R. 1088
[1031] Vidya Drolia V. Durga Trading Corporation (2021) 2 Scc 1

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CHAPTER 2: LEGAL FRAMEWORK GOVERNING ADR IN INDIA

2.1 Introduction

Alternative Dispute Resolution (ADR) refers to a set of mechanisms designed to resolve disputes outside the traditional court system, encompassing arbitration, mediation, negotiation, and conciliation. These methods provide structured yet flexible means for resolving conflicts while reducing the burden on conventional litigation. The primary objective of ADR is to offer an efficient, cost-effective, and less adversarial alternative to court proceedings, ensuring timely dispute resolution and fostering a more cooperative legal environment.

In India, the need for ADR has grown significantly due to the staggering backlog of cases and the inefficiencies of the traditional judicial system. Recognizing this, the enactment of the *Mediation Act, 2023* marks a transformative step in institutionalizing and streamlining mediation as a preferred dispute resolution mechanism. This legislation aims to enhance access to justice by promoting voluntary, time-bound, and structured mediation, encouraging disputing parties to reach amicable settlements.

Relevance and Evolution of ADR in India

The increasing prominence of ADR in India is closely tied to the challenges faced by the conventional judicial system, which is overburdened with caseloads, leading to prolonged delays and high litigation costs. With India's growing economy and global integration, the demand for a swift and efficient dispute resolution framework has intensified, particularly in commercial and civil disputes.

The *Mediation Act, 2023* is a significant step towards embedding mediation within India's legal framework, ensuring its wider acceptance and effective implementation. By institutionalizing pre-litigation mediation, establishing a Mediation Council, and recognizing online mediation, the Act reflects a progressive shift towards a more responsive and business-friendly legal ecosystem.

Unlike litigation, which is often adversarial, ADR—especially mediation—prioritizes amicable settlements, encourages dialogue, and preserves relationships. As India continues to modernize its legal landscape, the ADR wave, bolstered by the *Mediation Act, 2023*, represents a crucial movement toward a more efficient, accessible, and harmonious legal system.

2.2 Key Statutes Governing ADR in India

2.2.1 Arbitration and Conciliation Act, 1996

The Arbitration and Conciliation Act, 1996 was enacted to modernize India's arbitration framework and align it with international best practices. Based on the UNCITRAL Model Law, the Act aimed to provide a structured, efficient, and expeditious mechanism for dispute resolution while minimizing judicial intervention. Over the years, arbitration has gained prominence as an effective alternative to traditional litigation, particularly in commercial disputes, where time and efficiency are paramount. The Act's objectives include fostering party autonomy, ensuring procedural flexibility, and promoting institutional arbitration. It also incorporates conciliation as a viable alternative, reinforcing the broader goal of reducing the burden on Indian courts.[1032]

A critical distinction within the Indian arbitration regime lies in the dichotomy between institutional and ad hoc arbitration. Institutional arbitration, conducted under the supervision of recognized arbitral institutions such as the Singapore International Arbitration Centre (SIAC), the London Court of International Arbitration (LCIA), and the Indian Council of Arbitration (ICA), ensures structured

[1032] 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 February 19, 2025).

procedures and efficient case management. It significantly reduces delays and enhances credibility. In contrast, ad hoc arbitration, while offering greater flexibility, often suffers from inefficiencies due to procedural inconsistencies and the absence of administrative oversight.[1033] Consequently, despite India's legislative efforts, ad hoc arbitration remains prevalent, leading to prolonged disputes and, at times, excessive judicial interference. The promotion of institutional arbitration is crucial to ensuring that arbitration in India aligns with global best practices.[1034]

The Act also establishes a dual framework for domestic and international arbitration. Domestic arbitration, wherein both disputing parties are Indian entities, is primarily governed by Part I of the Act. In contrast, international commercial arbitration—where at least one party is foreign—operates within a broader legal framework that includes provisions for the enforcement of foreign awards. The Act adheres to the New York Convention and the Geneva Convention, ensuring that international arbitral awards are recognized and enforced in India. However, the extent of judicial intervention in foreign-seated arbitrations has historically been a contentious issue. The Supreme Court, in Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc.[1035], significantly curtailed judicial interference by holding that Part I of the Act does not apply to foreign-seated arbitrations. This landmark ruling overturned the earlier precedent set in Bhatia International v. Bulk Trading (2002)[1036], which had allowed Indian courts to intervene in foreign arbitral proceedings. The BALCO judgment marked a decisive step towards making India an arbitration-friendly jurisdiction by reinforcing the principle of minimal court interference.

A major point of contention in arbitration jurisprudence has been the interpretation of public policy as a ground for setting aside arbitral awards. The Indian judiciary has grappled with defining the contours of public policy, particularly in relation to international commercial arbitration. In Ssangyong Engineering & Construction Co. Ltd. v. NHAI (2019)[1037], the Supreme Court provided much-needed clarity, ruling that an arbitral award cannot be set aside merely due to misinterpretation of a contract or an error in legal reasoning. This judgment significantly narrowed the scope of Section 34, ensuring that arbitral awards are not overturned on broad or subjective grounds. By restricting the public policy exception to fundamental legal principles, Ssangyong strengthened the finality of arbitral awards and reaffirmed India's pro-arbitration stance.

Another critical aspect of arbitration law is the arbitrability of disputes, which determines whether a matter can be resolved through arbitration or requires judicial adjudication. The Supreme Court in Vidya Drolia v. Durga Trading Corporation[1038] laid down a four-fold test to assess arbitrability, emphasizing that disputes involving public rights, sovereign functions, or inalienable legal obligations cannot be referred to arbitration. This judgment reaffirmed that arbitration is preferred for private commercial disputes while clarifying that certain matters, such as landlord-tenant disputes under specific tenancy laws, may still be non-arbitrable.[1039] By providing a structured approach to determining arbitrability, the judgment reinforced the growing judicial support for arbitration in India.

Beyond arbitration, the Act also recognizes conciliation as an alternative dispute resolution mechanism under Part III. Conciliation differs from arbitration in that it is a non-binding, voluntary process where a neutral third party facilitates negotiations between disputing parties. If a settlement

[1033] Mehra P., "Quality Assurance in Alternative Dispute Resolution" *Indian Journal of Arbitration Law*, [2019].
[1034] Parinaz Fanibanda and Palak V. Mehta, "A Critical Study of Arbitration Laws through Years: 1940-2019," 22 Supremo Amicus, available at: www.supremoamicus.org (last visited March 6, 2025)
[1035] Bharat Aluminium Co. v. Kaiser Aluminium Technical Service, Inc. 2010 1 SCC 72
[1036] Bhatia International v. Bulk Trading S.A. (2002) 4 SCC 105
[1037] Ssangyong Engineering & Construction Co. Ltd vs. National Highways Authority of India (NHAI), (2019) 7 S.C.R. 522
[1038] Vidya Drolia & ors. vs. Durga Trading Corporation, [2019] 3 S.C.R. 465
[1039] Vidya Drolia Case: Final Chapter in the Arbitrability of Fraud Saga?, available at: https://indiacorplaw.in/2021/01/vidya-drolia-case-final-chapter-in-the-arbitrability-of-fraud-saga.html (last visited February 20, 2025).

is reached, it is recorded in a written agreement, which is legally binding and enforceable as an arbitral award. Conciliation is particularly useful in commercial disputes, where preserving business relationships is essential. Despite its potential, conciliation remains underutilized in India due to a lack of awareness and institutional support. Strengthening conciliation mechanisms could significantly contribute to reducing litigation and promoting amicable settlements.

The evolution of arbitration law in India has been shaped by judicial precedents, legislative amendments, and international developments. The overarching trend reflects a shift towards greater judicial restraint, pro-enforcement policies, and institutional arbitration. However, challenges remain, particularly in curbing judicial interference in domestic arbitrations and promoting consistency in arbitral proceedings. Future reforms should focus on streamlining enforcement mechanisms, encouraging institutional arbitration, and integrating technology-driven dispute resolution processes. As India aspires to become a global arbitration hub, ensuring the effective implementation of the Arbitration and Conciliation Act, 1996[1040] will be pivotal in enhancing investor confidence and fostering a robust alternative dispute resolution ecosystem.[1041]

2.2.2 Arbitration and Conciliation Amendment Act, 2015

The Arbitration and Conciliation Amendment Act of 2015 represents a significant overhaul of India's alternative dispute resolution framework. This legislation emerged as a response to numerous operational deficiencies identified in the original 1996 Act, which had been formulated based on the UNCITRAL model law on International Commercial Arbitration and the UNCITRAL Conciliation Rules of 1980. The amendments sought to address fundamental shortcomings that had become apparent through practical implementation over nearly two decades.[1042]

A primary concern identified by the Law Commission was the underdevelopment of institutional arbitration within India. Despite the global trend toward institutionalized dispute resolution mechanisms, India's arbitration landscape remained predominantly ad hoc in nature. The original legislation neither encouraged nor discouraged institutional frameworks, maintaining what could be characterized as an institutionally agnostic approach.[1043] Recognizing this limitation, the Commission proposed modifications designed to cultivate a robust institutional arbitration ecosystem within the country, thereby enhancing both domestic dispute resolution capabilities and international competitiveness.

The Commission's recommendations included an explanatory addition to section 11(6A), directing both the Supreme Court and High Courts to actively encourage disputants to pursue institutional arbitration when approached for intervention.[1044] Furthermore, the amendments sought to expand the definition of "arbitral tribunal" under section 2(d) to encompass emergency arbitrators, thus aligning Indian practice with evolving international standards.

Institutional development formed a cornerstone of the reform agenda. The Commission endorsed the establishment of an Indian Council of Arbitration to coordinate with existing arbitration institutions nationwide. It specifically acknowledged the exemplary operations of the Nani Palkhivala Arbitration Centre in Chennai, which had successfully developed comprehensive rules, governance structures, and professional staffing in southern India. Additionally, the Commission encouraged commercial chambers and industry associations to develop specialized arbitration rules and

[1040] The Arbitration and Conciliation Act, 1996
[1041] Parinaz Fanibanda and Palak V. Mehta, "A Critical Study of Arbitration Laws through Years: 1940-2019," 22 Supremo Amicus, available at: www.supremoamicus.org (last visited March 6, 2025)
[1042] Tiwari, Vartika, and Pragya Dubey, "The Debate around Applicability: An Analysis of the Arbitration and Conciliation (Amendment) Act, 2015," 1 *Ind. Arb. L. Rev.* (2019).
[1043] Vidya Rajarao & Darshan Patel, "Corporate Attitudes & Practices towards Arbitration in India," PricewaterhouseCoopers Report (2013).
[1044] Srishti Yadav, "Settlement Agreements in ADR Mechanisms in India: A Critical Analysis," 4 *Indian JL & Legal Rsch.*, (2022).

potentially create new arbitration centres, suggesting that governmental support through land grants or financial assistance could accelerate this process.

The proposed Arbitration Council of India would serve as a specialized body dedicated to promoting institutional arbitration throughout the country. This recommendation reflected the Commission's understanding that sustainable growth in arbitration practice required coordinated institutional leadership rather than isolated regulatory changes.

Cost considerations received substantial attention in the Commission's analysis. Citing the Supreme Court's observations in Union of India v. Singh Builders Syndicate[1045], the Commission highlighted how disproportionate arbitrator fees had undermined the fundamental value proposition of arbitration as an efficient dispute resolution mechanism. The Court had specifically noted instances where arbitration costs approached or exceeded the disputed amounts, particularly when panels comprised retired judges who charged substantial sitting fees without appropriate limits.[1046]

To address this financial barrier, the Commission proposed implementing a standardized fee structure for domestic arbitrations based on the schedule established by the Delhi High Court International Arbitration Centre. This framework would require periodic review every three to four years to maintain economic relevance. Importantly, the Commission recognized that international commercial arbitrations involving foreign parties might necessitate different fee structures, thus limiting the standardization requirement to domestic proceedings.

Procedural inefficiencies also received scrutiny. The Commission observed that despite Chapter 5 of the Act granting substantial powers to arbitral tribunals, many proceedings had evolved to mirror conventional court procedures, characterized by numerous hearings charged on a per-sitting basis. This practice increased costs and diminished the efficiency advantages that arbitration theoretically offered. Consequently, amendments to section 24(1) were proposed to ensure continuous proceedings during evidence recording and arguments.

The Commission sought to establish an appropriate balance between necessary judicial oversight and unwarranted intervention in arbitral proceedings. Recognizing the overburdened judicial system, particularly regarding commercial disputes, the Commission recommended adopting the Delhi High Court model of establishing dedicated arbitration benches to expedite resolution. For parties initiating frivolous challenges, the Commission suggested implementing actual cost penalties similar to those employed in the United Kingdom, through the insertion of Section 6A.

Procedural streamlining extended to arbitrator appointments as well. The Commission proposed delegating appointment authority to the High Courts and Supreme Court, which could further designate arbitration institutions to fulfill this function, while explicitly classifying such appointments as judicial acts. Section 11(7) amendments would make these appointment decisions final, while section 11(13) would establish a 60-day timeframe for resolving appointment matters following notice service.

Additional temporal efficiency measures included modifications to sections 34[1047] and 48, requiring applications to be decided within one year of notice service. The Commission also clarified through a new explanation under section 23 that arbitrators could decide counterclaims and set-offs without requiring separate references, provided these claims fell within the arbitration agreement's scope.

[1045] Union of India v. Singh Builders Syndicate, (2009) 4 SCC 523.
[1046] Dr. Pankaj Kumar Gupta & Sunil Mittal, Commercial Arbitration in India, 2 International Conference on Economics, Business and Management IPEDR (2010).
[1047] The Arbitration and Conciliation Act, 1996, Sec 34

Transparency requirements were enhanced through mandatory disclosure provisions compelling arbitrators to confirm their availability to complete proceedings within specified timeframes. Amendments to sections 8 and 11 would limit judicial intervention to determining the existence, non-existence, or invalidity of arbitration agreements. Appeals under section 37 [1048]would be permitted only when parties were refused arbitration referral or arbitrator appointment.

The amendments created a distinction between domestic and international arbitration standards for award challenges. Section 34(2)A would allow domestic awards to be set aside for patent illegality appearing on the record, though a proviso clarified that misapplication of law or improper evidence appreciation would not constitute sufficient grounds. Finally, the Commission recommended narrowing the interpretation of "public policy" to encompass only the fundamental policy of Indian law or conflicts with morality or justice.[1049]

Through these comprehensive reforms, the Arbitration and Conciliation Amendment Act of 2015 attempted to transform India's arbitration framework into a more efficient, accessible, and internationally competitive dispute resolution system.

2.2.3 The Arbitration and Conciliation Amendment Act, 2019

The Arbitration and Conciliation Amendment Act of 2019, which received presidential assent on August 9, 2019, introduced significant structural changes to India's arbitration framework. This legislative revision substantially transformed the institutional architecture of arbitration processes within the country, establishing new governance mechanisms and procedural requirements to enhance efficiency and professionalism in dispute resolution.

A cornerstone of this amendment was the introduction of designated arbitral institutions, empowering both the Supreme Court and High Courts to appoint qualified institutions rather than individuals for arbitration proceedings.[1050] This represented a paradigm shift from the previous approach that relied heavily on individual appointments. The amendment additionally incorporated a new definition under clause 2(h), explicitly addressing regulations promulgated by the Arbitration Council according to statutory provisions.

Section 11[1051] underwent extensive modifications, with the insertion of clause 3A granting authority to the Supreme Court and High Courts to designate arbitral institutions based on gradings established by the Arbitration Council under Section 43(I). In jurisdictions lacking properly graded institutions, the amendment authorized Chief Justices of respective High Courts to establish arbitral panels. These appointed arbitrators would function within institutional frameworks and receive compensation according to the fourth schedule's fee structure. The amendment further granted Chief Justices supervisory authority to periodically evaluate and revise these arbitrator panels.[1052]

The appointment process was streamlined to require applications directly from concerned parties, with jurisdiction divided between the Supreme Court for international commercial arbitration and High Courts for domestic disputes. Notably, the amendment eliminated subsections 6a, 7, and 10 that had been previously introduced in the 2015 revision, representing a significant procedural recalibration.

[1048] The Arbitartion and Conciliation Act, 1996, Sec 37
[1049] Parinaz Fanibanda and Palak V. Mehta, "A Critical Study of Arbitration Laws through Years: 1940-2019," 22 Supremo Amicus, available at: www.supremoamicus.org (last visited March 6, 2025)
[1050] Vidya Rajarao & Darshan Patel, "Corporate Attitudes & Practices towards Arbitration in India," PricewaterhouseCoopers Report (2013).
[1051] The Arbitration and Conciliation Act, 1996, Sec 11
[1052] Parinaz Fanibanda and Palak V. Mehta, "A Critical Study of Arbitration Laws through Years: 1940-2019," 22 Supremo Amicus, available at: www.supremoamicus.org (last visited March 6, 2025)

Several substitutions clarified jurisdictional matters in multi-request scenarios. Under the revised section 11(11), when multiple requests are submitted to different arbitral tribunals, priority is given to the institution receiving the first application. Section 11(12) established that references to arbitral institutions in international commercial arbitration or other proceedings are construed as references to designated institutions under subsection 3A. Additionally, section 11(13) imposed a thirty-day resolution deadline for arbitrator appointment applications, calculated from the date of notice service to opposing parties.

The amendment addressed financial considerations through section 11(14), authorizing arbitral institutions to determine tribunal fees and payment mechanisms subject to fourth schedule rates. An explanatory clause specifically excluded international commercial arbitration from these fee provisions, allowing parties in such cases to follow predetermined institutional rules for fee determination.

The legislation enhanced interim relief provisions through modifications to Section 17, permitting arbitral tribunals to grant interim measures after award issuance but before enforcement under Section 36[1053]. This change resolved previous limitations on arbitrator authority after award pronouncement. Procedural efficiency improved with amendments to Section 23[1054], establishing concrete timeframes for submitting claims and defences.

Section 29[1055] revisions mandated completion of arbitral awards within twelve months from pleadings completion under Section 23(4). For international commercial arbitration, a special provision encouraged expeditious resolution within the same twelve-month timeframe. Section 29(4) was amended to ensure procedural fairness by requiring arbitrators receive hearings before any fee reductions.[1056]

Two critical new sections enhanced arbitration integrity: Section 42A established confidentiality requirements for proceedings, with disclosure permitted solely for award enforcement purposes, while Section 42B provided liability protection for arbitrators acting in good faith in accordance with statutory provisions.

The establishment of the Arbitration Council of India represented perhaps the most transformative institutional innovation in the amendment. Section 43A authorized the appointment of a Chairperson according to detailed criteria, while Section 43B empowered the Central Government to establish the Council as a permanent legal entity with independent corporate status, property rights, and contractual capacity. Though headquartered in Delhi, the Council could establish satellite offices with governmental approval.

Council composition was prescribed in Section 43C, requiring a former Supreme Court or High Court judge with specialized arbitration knowledge as Chairperson, appointed through consultation with the Chief Justice. Additional members included an experienced arbitration practitioner nominated by the Central Government, an academic expert appointed in consultation with the Chairperson, joint secretary-level representatives from relevant governmental departments, a representative from recognized commercial and industrial bodies, and a Chief Executive Officer serving ex-officio.[1057]

The Council's responsibilities, delineated in Section 43D, encompassed promotion of alternative dispute resolution mechanisms and development of policies governing professional standards in arbitration. Section 43F established resignation procedures requiring three months' notice while

[1053] The Arbitration and Conciliation, 1996. Sec 36
[1054] The Arbitration and conciliation, 1996, Sec 23
[1055] The Arbitration and conciliation, 1996. Sec 29
[1056] Vidya Rajarao & Darshan Patel, "Corporate Attitudes & Practices towards Arbitration in India," PricewaterhouseCoopers Report (2013).
[1057] Dr. Pankaj Kumar Gupta & Sunil Mittal, Commercial Arbitration in India, 2 International Conference on Economics, Business and Management IPEDR (2010).

creating mechanisms for removing members engaged in misconduct or unable to perform duties due to incapacity, insolvency, outside employment, criminal conviction, or conflicts of interest.

The Council received authority to establish specialized committees and appoint experts under Section 43H. Section 43I charged the Council with institutional grading responsibilities based on quality metrics, infrastructure assessment, arbitrator qualifications, and timely resolution performance. The eighth schedule, introduced through this amendment, established accreditation qualifications for arbitrators, with provision for Central Government modifications in consultation with the Council.

Section 43K mandated creation of an electronic repository for all Indian arbitral awards, while Section 43M established a Chief Executive Officer position for daily administrative management. Finally, Section 87[1058] addressed retrospective application of the 2015 amendments, specifying that unless parties agreed otherwise, those provisions would not apply to proceedings initiated before the 2015 changes, regardless of when related court proceedings commenced.

Through these comprehensive reforms, the 2019 amendment fundamentally restructured India's arbitration landscape, emphasizing institutional capacity, professional standards, and procedural efficiency in alignment with international best practices.

2.2.4 Arbitration and Conciliation Amendments, 2021

The legislative modifications to India's arbitration system enacted in 2021 represent a significant shift in the country's approach to alternative dispute resolution. Taking effect on March 11, 2021, after presidential approval, these amendments substantially altered Section 36 of the original legislation. The revised provisions establish that courts may unconditionally suspend an arbitral award's enforcement pending the resolution of an application under Section 34, provided there exists reasonable evidence suggesting the arbitration agreement's invalidity or that corruption or fraudulent practices influenced the award's formulation. Notably, these changes apply retroactively to October 23, 2015.

A consequential aspect of these reforms involves the elimination of the eighth schedule from the principal statute. This modification potentially undermines India's progress toward becoming a centre for institutional arbitration and contradicts efforts to create an environment supportive of arbitration processes. The amendments create problematic scenarios where unsuccessful parties might simply allege corrupt practices to automatically prevent enforcement of arbitration decisions. Such developments risk increasing judicial involvement in matters specifically designed for alternative resolution mechanisms, essentially defeating their fundamental purpose.

The legislation fails to adequately define or delineate what constitutes fraud or corruption in this context, creating ambiguity that will likely generate additional litigation between disputants. This vagueness will inevitably place greater strain on an already burdened court system. For applications already in process under Section 36[1059] before appropriate jurisdictional courts, applicants now have the option to submit fresh applications based on the grounds established in the recent amendments.

These revisions negatively impact the enforcement of arbitration outcomes, impeding India's aspirations to establish itself as an arbitration-friendly jurisdiction. The retrospective application of these changes represents a regressive development in the evolution of India's arbitration framework. However, not all modifications are problematic. The dissolution of the eighth schedule, which previously dictated qualification requirements for arbitrators, provides the Arbitration Council of India with enhanced flexibility in appointments.

[1058] The Arbitration and conciliation, 1996. Sec 87
[1059] The Arbitration and conciliation Act 1996. Sec 36

An unquestionable benefit emerges from the increased opportunities for international arbitrators to participate in India's dispute resolution landscape. This change facilitates the utilization of global expertise in resolving international commercial disputes. By aligning more closely with UNCITRAL model law provisions, this aspect of the amendments may eventually contribute to establishing India as a significant location for institutional arbitration.[1060]

Despite these positive elements, the overall impact of the 2021 amendments remains concerning, particularly regarding the potential for increased litigation and judicial interference in arbitration proceedings. The tension between strengthening procedural safeguards against fraud while maintaining efficient dispute resolution represents a fundamental challenge that Indian lawmakers must continue to address as the arbitration landscape evolves.

2.2.5 Code of Civil Procedure, 1908 (Section 89)

The Code of Civil Procedure, 1908 (CPC), under Section 89[1061], mandates that courts encourage parties to resolve disputes through Alternative Dispute Resolution (ADR) mechanisms. The objective of this provision is to reduce the burden on the judiciary, promote speedy justice, and facilitate amicable settlements.[1062]

Mandate for Courts to Encourage ADR

Section 89[1063] CPC provides that if a court finds that a dispute can be settled outside the formal judicial process, it must refer the matter to an ADR mechanism. The provision was introduced through the Amendment Act of 1999 and came into effect in 2002, aligning with the objective of making justice more accessible and efficient. The court plays a proactive role in identifying cases suitable for ADR and ensuring that parties explore alternative methods before proceeding with litigation.

Types of ADR Mechanisms Recognized Under Section 89

Section 89 recognizes five types of ADR mechanisms:

1. Arbitration – A process where parties refer their dispute to an arbitrator whose decision is binding.
2. Conciliation – A neutral third party (conciliator) assists disputing parties in reaching a settlement.
3. Mediation – A mediator facilitates negotiations between parties to help them arrive at a voluntary agreement.
4. Judicial Settlement – The court itself facilitates a settlement, which is then binding on the parties.
5. Lok Adalat – A forum where disputes are resolved through mutual settlement, with decisions having the same status as a court decree.

Challenges in Judicial Implementation of ADR[1064]

Despite the statutory mandate under Section 89, the practical implementation of ADR in India faces several challenges:

- Lack of Awareness: Many litigants and even legal professionals are unaware of ADR's benefits.

[1060] Dr. Pankaj Kumar Gupta & Sunil Mittal, Commercial Arbitration in India, 2 International Conference on Economics, Business and Management IPEDR (2010).
[1061] The code of Civil Procedure, 1908. Sec 89
[1062] Akshay Verma, Institutionalisation of Arbitration: A Need of ADR in India, 1 *Delhi Journal of Contemporary Law* (2018).
[1063] The Code of Civil Procedure, 1908. Sec 89.
[1064] The Scope and Effect of Section 89 in CPC, available at: https://www.lawctopus.com/academike/the-scope-and-effect-of-section-89-cpc/ (last visited February 18, 2025).

- Judicial Hesitancy: Some judges hesitate to refer matters to ADR due to concerns about enforceability and lack of clarity on procedural aspects.
- Infrastructure & Training: There is inadequate infrastructure and a shortage of trained mediators and arbitrators.
- Reluctance of Parties: Many litigants, especially in commercial disputes, prefer litigation over ADR due to concerns about fairness, neutrality, or the binding nature of certain ADR outcomes.
- Interpretational Issues: Courts have often struggled to interpret the scope and applicability of Section 89, leading to inconsistent implementation.

Landmark Judgment: Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (2010)

The Supreme Court of India, in Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (2010)[1065], provided clarity on the applicability of Section 89 CPC. The key takeaways from the judgment include:

- The court laid down guidelines to determine which cases are suitable for ADR.
- It clarified that ADR is mandatory in certain categories of disputes, such as contractual disputes, family matters, and commercial disputes.
- The court addressed the confusion in procedural interpretation by ruling that Section 89 should be read with the Arbitration and Conciliation Act, 1996 and the Legal Services Authorities Act, 1987.
- It emphasized that courts should actively encourage ADR rather than merely treating it as an optional mechanism.

2.2.6 Legal Services Authorities Act, 1987

The Legal Services Authorities Act, 1987 was enacted to provide free and competent legal aid to weaker sections of society and to ensure justice for all, irrespective of financial or social constraints. One of its most significant contributions is the establishment of Lok Adalats, which serve as an alternative dispute resolution (ADR) mechanism to ease the burden on traditional courts.[1066]

Establishment of Lok Adalats

Lok Adalats are organized at various levels—state, district, and taluk—to provide a quick, cost-effective, and amicable resolution of disputes. These courts have jurisdiction over civil cases, compoundable criminal cases, and matters related to public utility services. Their informal nature allows for settlement through negotiation, conciliation, and mediation, ensuring swift justice.

Binding Nature of Lok Adalat Awards

A defining feature of Lok Adalats is that their awards hold final and binding status on both parties, with no provision for appeal under normal circumstances. This principle was upheld in the landmark Supreme Court judgment State of Punjab v. Jalour Singh (2008)[1067], where the Court clarified that once an award is passed in a Lok Adalat, it attains finality, and no further appeal lies against it.[1068] This reinforces the credibility of Lok Adalats as an effective dispute resolution mechanism.

[1065] Afcons Infrastructure Ltd. vs. Cherian Varkey Construction, [2010] 8 S.C.R. 1053
[1066] Lok Adalats: An Alternative Dispute Resolution Mechanism, available at: https://www.nextias.com/blog/lok-adalats/ (last visited February 19, 2025).
[1067] State of Punjab v. Jalour Singh, (2008) 2 SCC 660
[1068] Akshay Verma, Institutionalisation of Arbitration: A Need of ADR in India, 1 *Delhi Journal of Contemporary Law* (2018).

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Promotion of Mediation and Conciliation

Beyond adjudicating disputes, Lok Adalats emphasize mediation and conciliation, encouraging disputing parties to reach mutually acceptable settlements. This approach aligns with the broader objective of ADR, promoting harmony and reducing litigation costs. Mediation and conciliation under the Lok Adalat framework have proven especially useful in matters such as family disputes, land disputes, and financial matters, where a negotiated settlement is preferable over prolonged litigation.

The Legal Services Authorities Act, 1987, through the establishment of Lok Adalats, has played a pivotal role in strengthening India's ADR framework.[1069] The binding nature of Lok Adalat awards ensures finality and expedites the justice delivery process, reducing court backlog. With landmark judgments reinforcing their authority, Lok Adalats continue to be an essential mechanism for ensuring accessible and efficient justice in India.

2.2.7 Consumer Protection Act, 2019

The Consumer Protection Act, 2019, introduced a significant reform by incorporating mediation as a formal mechanism for resolving consumer disputes. This development aimed at addressing the long-standing issue of delays in consumer litigation and providing an efficient alternative to traditional adjudication. With an increasing backlog of cases in consumer forums, mediation offers a quicker, more cost-effective, and consumer-friendly means of resolving disputes. Unlike conventional litigation, which often stretches over years, mediation focuses on fostering dialogue between parties, encouraging voluntary settlements, and reducing the adversarial nature of consumer disputes.

A major feature of this reform is the establishment of Consumer Mediation Cells at the national, state, and district levels, as mandated by Sections 74[1070] and 75[1071] of the Act. These mediation cells operate within their respective jurisdictions and play a crucial role in facilitating amicable settlements. The mediators empanelled under the Act are required to meet specific qualifications and adhere to strict standards of impartiality and confidentiality, ensuring that consumer rights remain protected throughout the process. By institutionalizing mediation, India has aligned itself with global best practices, where alternative dispute resolution mechanisms have successfully expedited consumer justice.[1072]

One of the primary advantages of mediation in consumer disputes is the speedy resolution of grievances. Traditional consumer courts are often burdened with procedural complexities and an overwhelming number of cases, leading to prolonged litigation. Mediation provides a viable solution by enabling parties to settle disputes at an early stage, reducing both time and financial costs. By fostering dialogue and encouraging mutually agreeable solutions, mediation empowers consumers while minimizing the burden on judicial forums. Additionally, since mediation proceedings are voluntary and confidential, they provide a less stressful and more constructive approach to dispute resolution.

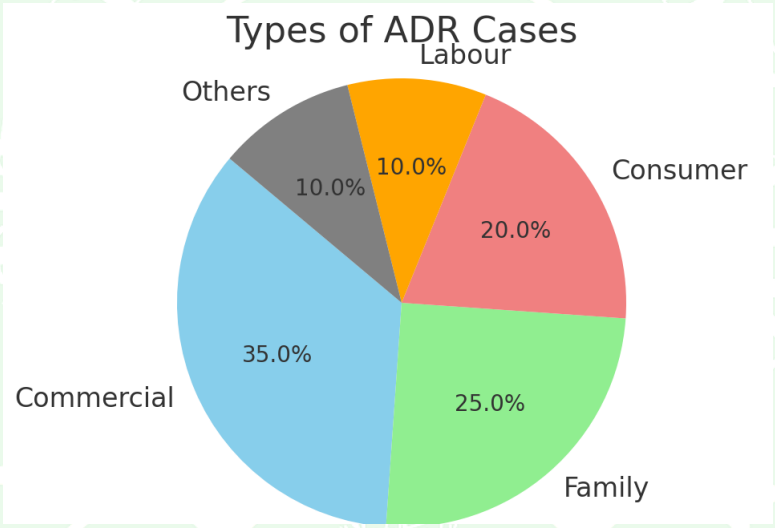
Despite the advantages of alternative dispute resolution, the Indian judiciary has drawn a clear distinction between consumer disputes and other commercial conflicts that may be referred to arbitration. This distinction was reinforced by the Supreme Court in the landmark case of M/S Emaar MGF Land Ltd. v. Aftab Singh (2018)[1073], where the Court ruled that consumer disputes are not arbitrable under the Arbitration and Conciliation Act, 1996. The judgment emphasized that consumer protection laws grant statutory rights to individuals, making consumer disputes fundamentally different from

[1069] Vidya Rajarao & Darshan Patel, "Corporate Attitudes & Practices towards Arbitration in India," PricewaterhouseCoopers Report (2013).
[1070] The Consumer Protection Act, 2019. Sec 74.
[1071] The Consumer Protection Act, 2019. Sec 75.
[1072] Consumer Protection Act, 2019, available at: https://blog.ipleaders.in/consumer-protection-act-2019-2/ (last visited February 20, 2025).
[1073] M/S Emaar MGF Land Limited vs. Aftab Singh, [2018] 14 S.C.R. 791.

private contractual claims that can be subjected to arbitration. The Court further clarified that the Consumer Protection Act is a welfare legislation designed to safeguard consumer interests, and its remedies cannot be nullified by arbitration agreements imposed by service providers or businesses. This ruling affirmed that while arbitration remains a key dispute resolution mechanism in commercial transactions, it cannot override statutory consumer protections.[1074]

The introduction of mediation in consumer disputes represents a progressive shift towards a more accessible and efficient justice system. While mediation has the potential to revolutionize consumer dispute resolution in India, its success will depend on factors such as effective implementation, mediator training, and public awareness. The legal framework must ensure that mediation is conducted in a fair and transparent manner, preventing any undue influence from corporations or service providers. Additionally, the enforcement of mediated settlements must be robust and legally binding, ensuring that consumers receive the justice they seek. By strengthening the mediation framework and fostering a culture of alternative dispute resolution, India can significantly enhance consumer trust in the legal system while reducing the burden on consumer courts.

Figure no. 1 - Distribution of ADR Cases in India



Source: NITI Aayog, Strategy for New India @75: Judicial Reform and ADR 48–49 (Government of India 2018)..

2.3 International Framework

2.3.1 UNCITRAL Model Law on International Commercial Arbitration

The UNCITRAL Model Law on International Commercial Arbitration (1985) was a landmark effort to standardize and harmonize international arbitration laws, addressing inconsistencies across jurisdictions. Its primary aim was to facilitate cross-border dispute resolution by providing a comprehensive framework covering arbitration agreements, procedural rules, and enforcement mechanisms. This Model Law has since been adopted or used as a reference point by numerous jurisdictions, ensuring that international arbitration proceedings remain efficient, impartial, and enforceable.

[1074] Emaar Mgf Land Ltd. vs Aftab Singh, available at: https://www.argus-p.com/updates/updates/emaar-mgf-land-ltd-vs-aftab-singh/#:~:text=The%20Hon'ble%20Supreme%20Court,8%20of%20the%20Arbitration%20Act. (last visited February 20, 2025).

India's Adoption and Alignment with the Model Law

India recognized the necessity of aligning its arbitration laws with global best practices, leading to the enactment of the Arbitration and Conciliation Act, 1996. This Act is heavily influenced by the UNCITRAL Model Law, incorporating key principles such as minimal judicial intervention, party autonomy, and enforceability of arbitral awards. The 1996 Act replaced the outdated Arbitration Act of 1940, which was criticized for excessive judicial interference and procedural inefficiencies.

However, while the Act mirrors the Model Law, certain deviations persist. For example, Section 34 allows courts to set aside awards based on "patent illegality," a ground not explicitly recognized under the Model Law. This provision has led to judicial intervention in arbitration matters, sometimes undermining the pro-arbitration stance India aimed to adopt.

Influence on the Arbitration and Conciliation Act, 1996

The Arbitration and Conciliation Act, 1996, can be viewed as India's direct response to the principles enshrined in the UNCITRAL Model Law. The Act:

1. Defines International Arbitration: Following Article 1(3) of the Model Law, Section 2(1)(f) of the 1996 Act defines international arbitration based on the place of business of the parties or the location of arbitration.
2. Recognizes Party Autonomy: The Act allows parties to choose procedural rules, arbitrators, and governing law.
3. Restricts Judicial Intervention: Section 5 of the Act aligns with Article 5 of the Model Law by limiting court interference to instances explicitly permitted by the Act.
4. Facilitates Enforcement of Foreign Arbitral Awards: The Act incorporates the New York Convention (1958) and the Geneva Convention (1927) principles, ensuring that foreign arbitral awards are recognized and enforced in India.

Despite these alignments, judicial interpretation has played a critical role in shaping the Act's application, particularly in enforcing foreign arbitral awards.

Landmark Judgment: Renusagar Power Co. v. General Electric Co. (1994)[1075]

The Renusagar case remains a pivotal judgment in India's arbitration jurisprudence, setting the precedent for the enforcement of foreign arbitral awards. In this case, the Supreme Court of India ruled that foreign awards could only be refused enforcement on limited grounds—public policy being one of them. Importantly, the Court clarified that public policy must be construed narrowly, covering only "fundamental principles of Indian law, justice, and morality." This approach was in harmony with the UNCITRAL Model Law, which also limits the scope of judicial intervention in arbitration.

The principles from Renusagar were later incorporated into the Arbitration and Conciliation Act, 1996, reinforcing India's commitment to international arbitration standards. However, later interpretations, particularly in ONGC v. Saw Pipes (2003)[1076], expanded the scope of public policy, leading to concerns over excessive judicial scrutiny of arbitral awards.

2.3.2 New York Convention (1958) on the Recognition and Enforcement of Foreign Arbitral Awards

The 1958 New York Convention serves as a cornerstone in international arbitration, creating a uniform framework for the recognition and enforcement of foreign arbitral awards. It mandates that signatory states enforce such awards while limiting the grounds on which enforcement may be refused, thereby

[1075] Renusagar Power Co. Ltd. Etc. Vs General Electric Co., [1993] Supp. (3) S.C.R. 22.
[1076] Oil & Natural Gas Corporation Ltd. Vs. Saw Pipes Ltd., 2003 (5) Scc 705

fostering strong trade and commercial relations. This Convention plays a crucial role in ensuring certainty and predictability in cross-border dispute resolution.

Recognition of International Arbitral Awards in India

India, as a signatory to the Convention, has incorporated its principles into domestic law through the Arbitration and Conciliation Act, 1996. Under this framework, foreign arbitral awards are recognized unless they fall under the limited exceptions provided in Section 48, such as awards being contrary to public policy or lacking due process. The Indian judiciary has generally adopted a pro-enforcement stance, reinforcing the Convention's objectives of minimal judicial intervention and party autonomy.

Enforcement Mechanisms under Indian Law

The enforcement of foreign arbitral awards in India follows a streamlined process wherein the award holder approaches a competent Indian court under Section 47 of the Arbitration and Conciliation Act, 1996. Once the court is satisfied that the award meets the New York Convention's criteria, it is enforced as a decree of the court. This mechanism eliminates procedural complexities and enhances the efficiency of international arbitration in India.[1077]

Judicial Review and Govt. of India v. Vedanta Ltd. (2020)[1078]

The scope of judicial review concerning foreign arbitral awards has been a subject of debate in India. In *Govt. of India v. Vedanta Ltd. (2020)*, the Supreme Court reaffirmed India's commitment to the New York Convention by limiting the scope of judicial intervention in the enforcement of foreign arbitral awards. The judgment emphasized that Indian courts should adopt a pro-enforcement approach, restricting their review to the grounds explicitly provided under the Arbitration Act, thereby preventing unnecessary delays in enforcement.

Table no. 2 - International Instruments Influencing Indian ADR

Instrument	Impact on Indian ADR
UNCITRAL Model Law	Inspired Arbitration Act of 1996
New York Convention (1958)	Basis for enforcement of foreign arbitral awards
Geneva Convention	Supports international arbitration recognition
IBA Guidelines	Guides conflict-of-interest disclosures

Source: UNCITRAL Secretariat, A Guide to the UNCITRAL Model Law on International Commercial Arbitration (1985) with Explanatory Note 1–6 (United Nations 2012).

2.4 Challenges in the Implementation of ADR System in India

2.4.1 Judicial Overreach

The legislative framework established by the Arbitration and Conciliation Act of 1996 (with subsequent amendments) endeavors to minimize court intervention in arbitration proceedings. Nevertheless, judicial bodies throughout India have demonstrated a persistent inclination toward excessive

[1077] Mehra P., "Quality Assurance in Alternative Dispute Resolution" *Indian Journal of Arbitration Law*, [2019].
[1078] Government of India v. Vedanta Limited, (2020) 10 Scc 1

involvement across numerous phases of arbitration. This interventionist approach manifests particularly through the broad interpretation of "public policy" as grounds for nullifying arbitration determinations, substantially compromising the intended conclusiveness of these resolutions.[1079]

A watershed development occurred when the Supreme Court, adjudicating in ONGC Ltd. v. Saw Pipes Ltd.[1080], substantially expanded the conceptual boundaries of "public policy" to encompass matters of "patent illegality." This judicial innovation effectively authorized courts to scrutinize the substantive elements of arbitral decisions, contrary to international best practices. While subsequent jurisprudence, exemplified by cases such as Venture Global Engineering v. Satyam Computer Services Ltd.[1081], attempted to curtail this expansionist tendency, the inconsistency in judicial perspectives continues to generate considerable procedural and substantive ambiguity.

Legislative responses materialized through significant amendments enacted in 2015 and 2021, specifically designed to constrain and clarify the interpretation of public policy exceptions. These amendments represent parliamentary recognition of the problematic nature of extensive judicial review. However, implementation challenges persist, with substantial variations observed across different jurisdictions within the Indian legal system.

This tension between legislative intent and judicial practice highlights a fundamental challenge in Indian arbitration jurisprudence: balancing appropriate judicial oversight against the principle of arbitral autonomy. The vacillation between restrictive and expansive approaches to intervention creates unpredictability for parties seeking finality through alternative dispute resolution mechanisms. Consequently, stakeholders in arbitration proceedings face heightened uncertainty regarding the durability of obtained awards.

The ongoing evolution of this legal dialectic underscores the complex relationship between judicial authority and arbitral independence within India's dispute resolution framework. Resolution of this tension remains critical for establishing India as a globally competitive arbitration jurisdiction aligned with international standards of limited judicial intervention.

2.4.2 Delayed Proceedings

In the Indian legal framework, the fundamental benefit of arbitration—its expeditious dispute resolution—frequently remains unrealized due to systematic operational hindrances. The arbitration process encounters numerous impediments, including administrative ineffectiveness, repeated postponements of proceedings, and protracted judicial interventions in critical aspects such as arbitrator selection, provisional remedies, and the implementation of final decisions.

The legislative framework attempted to address these temporal concerns through Section 29A[1082] of the Arbitration Act, which establishes a definitive timeframe for arbitral proceedings to conclude within twelve months after pleadings are completed.[1083] Nevertheless, this statutory provision often lacks rigorous implementation and enforcement mechanisms. The theoretical time constraints become largely symbolic rather than practical mandates in the actual conduct of proceedings.

This implementation gap manifests most prominently in disputes involving governmental entities and public enterprises. Such cases frequently extend well beyond reasonable durations, sometimes continuing for numerous years. This prolongation fundamentally contradicts the initial rationale behind selecting arbitration as an alternative to conventional court litigation.[1084] The paradoxical

[1079] Arbitration and Conciliation (Amendment) Act 2015, No. 3 of 2016, India.
[1080] ONGC Ltd. v. Saw Pipes Ltd., AIR 2003 SUPREME COURT 2629.
[1081] Venture Global Engineering v. Satyam Computer Services Ltd., (2008) 4 SCC 190.
[1082] Arbitration and Conciliation Act, 1996 (as amended), s. 29A.
[1083] Ibid.
[1084] Malhotra, O.P., and Malhotra, Indu, The Law and Practice of Arbitration and Conciliation (3rd ed., LexisNexis, 2014) 2145.

outcome transforms what should be an efficient resolution mechanism into a process that mirrors—or occasionally exceeds—the temporal shortcomings of traditional litigation pathways.

Consequently, participants in the Indian arbitration ecosystem face a structural contradiction: the pursuit of expeditious justice through arbitration often leads to protracted proceedings that negate the very efficiency sought. This systemic inconsistency requires comprehensive procedural reforms and enhanced enforcement mechanisms to restore arbitration's intended efficiency advantage. Without such interventions, the theoretical benefits of arbitration will continue to be undermined by practical implementation failures, particularly in complex cases involving significant public interests or governmental parties.

2.4.3 Lack of Professionalism and Arbitration Bias

The Indian arbitration framework faces substantial challenges regarding arbitrator impartiality and professional standards. A particular area of concern emerges in the context of ad hoc arbitration proceedings, especially those involving governmental organizations. These proceedings frequently draw arbitrators from pools comprised predominantly of former judicial officers and administrative officials, which inevitably raises questions about the genuine independence of the arbitration process.[1085]

The legislative modifications implemented in 2015 attempted to address these issues by incorporating Schedules V and VII into the existing regulatory structure. These additions, modelled after international best practices outlined in the IBA Guidelines on Conflicts of Interest in International Arbitration, sought to establish clearer parameters regarding conflicts of interest.[1086] However, the practical application and enforcement of these provisions have proven inadequate in resolving the underlying issues.

Further complicating matters is the notable absence of rigorous qualification requirements and standardized certification procedures for individuals serving as arbitrators. This regulatory gap has resulted in inconsistent quality of arbitration services, with significant variations in both procedural competence and adherence to ethical standards. The lack of uniform professional development pathways for arbitrators consequently impacts the reliability and integrity of the entire dispute resolution mechanism.

These systemic shortcomings potentially undermine stakeholder confidence in the arbitration process and may ultimately affect India's standing in the international arbitration community. Addressing these fundamental issues requires comprehensive reform of arbitrator selection processes, implementation of mandatory professional development programs, and stronger enforcement of ethical guidelines to ensure genuine neutrality in dispute resolution proceedings.

2.4.4 Weak system of Institutional Arbitration

India's arbitration landscape faces a significant obstacle in the underdevelopment of robust and prestigious arbitral institutions. Despite the existence of several domestic organizations, including the Indian Council of Arbitration (ICA) and the Mumbai Centre for International Arbitration (MCIA), these entities have not achieved the international recognition or operational excellence characteristic of premier global arbitration forums.[1087]

The domestic arbitral bodies in India demonstrate notable deficiencies in several critical domains. Their case management protocols lack sophistication and efficiency, their procedural frameworks

[1085] S.K. Chawla, Law of Arbitration and Conciliation (Eastern Book Company, 2020) 543.
[1086] IBA Guidelines on Conflicts of Interest in International Arbitration, 2014.
[1087] Sander, Frank E.A., "Alternative Methods of Dispute Resolution: An Overview", 37 *Florida Law Review* (1985).

remain relatively static rather than innovative, and their international standing pales in comparison to established entities such as the Singapore International Arbitration Centre or the London Court of International Arbitration.

This institutional weakness has created a vacuum within the Indian dispute resolution ecosystem, resulting in the prevalence of ad hoc arbitration proceedings. These improvised processes operate without comprehensive administrative infrastructure or consistent oversight mechanisms. Consequently, the quality of arbitration services varies dramatically across different proceedings.[1088]

The predominance of these unstructured arbitration approaches generates numerous operational inefficiencies, including inconsistent application of procedural rules, unpredictable timelines, and variable quality of awards. These systemic shortcomings compound to create an environment of uncertainty for potential users of arbitration services in India.

The cumulative effect of these institutional limitations substantially undermines stakeholder confidence in India's arbitration framework. Commercial entities, both domestic and international, frequently express hesitation about engaging with a system characterized by such unpredictability and inconsistency. This deficiency represents a fundamental challenge that must be addressed for India to develop a world-class arbitration ecosystem capable of meeting contemporary dispute resolution needs.

2.4.5 High Costs

The financial implications of pursuing arbitration in the Indian legal context frequently contradict general assumptions about its affordability. Substantial remuneration demanded by distinguished legal practitioners functioning as arbitrators, coupled with extensive procedural complexities, renders the process financially burdensome. The predominant unstructured organization of arbitration proceedings throughout India contributes significantly to fiscal uncertainty.

While legislative provisions exist—specifically Section 11(14)—authorizing superior judicial bodies to establish regulatory frameworks governing arbitrators' compensation, actual enforcement varies considerably across different legal territories.[1089] This absence of standardization creates an environment where participants cannot accurately forecast expenditures.

Such monetary ambiguity particularly disadvantages commercial enterprises with limited resources and private citizens. These stakeholders, when confronted with potential legal disputes, frequently reconsider arbitration as a viable resolution mechanism due to financial constraints. The economic barriers effectively restrict access to what should theoretically serve as an equitable alternative to conventional litigation.

The financial unpredictability transforms arbitration from an accessible legal remedy into a privilege primarily available to entities possessing substantial financial resources. This circumstance fundamentally undermines the foundational purpose of alternative dispute resolution: providing efficient, fair access to justice irrespective of participants' economic capacity.

2.4.6 Ambiguous meaning of Public Policy

The exception clause concerning societal norms and collective welfare standards represents perhaps the most contentious element within India's arbitration framework. The judicial landscape exhibits remarkable fluctuation between expansive and restrictive interpretations of this principle, fostering considerable uncertainty in legal outcomes.

[1088] Mustill, M., "Institutional versus Ad Hoc Arbitration," 17 J. Intl. Arb., (2000).
[1089] Arbitration and Conciliation Act, 1996 (as amended), s. 11(14).

Initially, the highest judicial authority of India established a precedent favoring limited application of community standard exceptions when examining international arbitral decisions. This conservative approach, articulated through the Renusagar[1090] litigation involving an energy corporation and a multinational engineering firm, aimed to constrain judicial intervention in cross-border dispute resolutions. However, subsequent judicial determinations progressively widened the interpretative scope, effectively expanding courts' supervisory authority over arbitration outcomes.

Legislative intervention materialized in 2015, with statutory amendments explicitly designed to reinstate the originally intended narrow construction of this exception. The reform sought to enhance predictability and finality in arbitration proceedings, aligning Indian practices with global standards favoring minimal interference.[1091] Nevertheless, judicial patterns reveal an intermittent reversion to broader interpretative approaches, particularly when reviewing domestically rendered arbitral determinations.

This interpretative inconsistency creates substantial challenges for stakeholders in arbitration proceedings. Legal professionals face difficulties in providing reliable guidance to clients, while commercial entities encounter obstacles in accurately assessing litigation risks. The resulting unpredictability potentially undermines the fundamental advantages of arbitration as an alternative dispute resolution mechanism – namely efficiency, finality, and procedural certainty.

The ongoing tension between legislative intent and judicial application demonstrates the complex interplay between sovereignty concerns and the facilitation of efficient commercial dispute resolution. This dynamic equilibrium continues to evolve through jurisprudential developments, reflecting deeper questions about the appropriate balance between safeguarding fundamental societal interests and respecting party autonomy in alternative dispute resolution frameworks.

2.4.7 Inadequate Infrastructure

The substandard condition of both material and digital frameworks supporting arbitration proceedings represents a significant challenge throughout numerous Indian regions. In stark contrast to premier global facilities such as Singapore's Maxwell Chambers or the sophisticated venues available in London, the Indian arbitration landscape suffers from a noticeable absence of contemporary, purpose-designed centres across its principal urban areas.

Despite modest progress through the establishment of institutions like the Mumbai Centre for International Arbitration and the Delhi International Arbitration Centre, India continues to lack a comprehensive, nationwide network of suitable venues. This deficiency becomes increasingly problematic in the current environment, where remote proceedings have gained substantial prominence. The contemporary arbitration ecosystem demands substantial capital allocation toward electronic infrastructure, confidential communication systems, and versatile arrangements accommodating participants in various locations simultaneously.

The current limitations hamper India's potential to position itself as a preferred destination for domestic and international dispute resolution. Without addressing these fundamental requirements, arbitration proceedings may experience logistical complications, technological interruptions, and compromised efficiency. Furthermore, inadequate facilities potentially undermine participant confidence in the process, particularly when international parties are involved and accustomed to superior standards elsewhere.

[1090] Renusagar Power Co. Ltd. Etc. Vs General Electric Co., [1993] Supp. (3) S.C.R. 22.
[1091] Vijay Karia v. Prysmian Cavi E Sistemi SRL, (2020) 11 SCC 1.

Developing comprehensive arbitration infrastructure necessitates coordinated efforts between governmental bodies, legal institutions, and private stakeholders. Such development would require careful consideration of regional needs, technological advancements, and international best practices to create environments conducive to effective dispute resolution across the country.

2.4.8 Lack of Awareness

The insufficient comprehension regarding arbitration advantages and methodologies presents a significant obstacle to its widespread implementation across Indian commercial entities, particularly those operating at smaller scales. Many enterprises remain uninformed about how arbitration functions as an alternative dispute resolution mechanism and the potential efficiencies it offers compared to traditional litigation pathways.[1092] This knowledge deficit substantially restricts arbitration's expansion throughout the Indian business landscape.

Furthermore, deeply embedded societal preferences for conventional judicial proceedings create additional barriers to arbitration acceptance. Indian commercial entities frequently demonstrate a pronounced inclination toward court-based resolution mechanisms rather than exploring alternative approaches, regardless of potential benefits these alternatives might provide. This behavioural pattern substantially hinders the organic development of arbitration practices within the country's commercial framework.

The contrast becomes particularly evident when examining jurisdictions such as Singapore, where governmental entities actively champion arbitration processes and the business community broadly embraces these methods. The Singaporean model demonstrates how coordinated promotion and cultural acceptance can establish arbitration as a preferred dispute resolution mechanism. Conversely, India has yet to successfully incorporate arbitration procedures into its fundamental commercial dispute resolution paradigm. This incomplete integration affects domestic organizations and deters international commercial entities from selecting India as their arbitration venue.

The reluctance among both local and global businesses to designate India as an arbitration forum represents a missed opportunity for the nation's legal services sector and broader economic interests. Addressing these awareness deficiencies and cultural resistances requires comprehensive educational initiatives and policy interventions designed to highlight arbitration's strategic advantages within the Indian commercial context.

2.5 Conclusion

The legal landscape of Alternative Dispute Resolution (ADR) has undergone significant transformation, driven by legislative reforms, judicial activism, and evolving global best practices. India has made considerable strides in institutionalizing ADR through key developments such as the Arbitration and Conciliation Act, judicial precedents favoring arbitration, and the promotion of mediation as a mainstream dispute resolution mechanism.

Looking ahead, the future of ADR in India appears promising, with increasing reliance on technology-driven dispute resolution mechanisms, the integration of online dispute resolution (ODR), and a shift towards specialized mediation and arbitration frameworks. Courts have also played a pivotal role in shaping ADR's trajectory by reinforcing the principles of minimal judicial interference while ensuring procedural fairness and efficiency. Judicial perspectives continue to evolve, favoring ADR as a tool to ease the burden on courts and provide expeditious justice.

As ADR cements its place within India's justice system, its role will expand beyond commercial disputes to include family law, labor disputes, and even public-interest matters. The effectiveness of

[1092] Fali Nariman, "Ten Steps to Strengthen Arbitration in India," 5 *Indian J. Arb. L.* (2016).

ADR will ultimately depend on robust legislative support, judicial endorsement, and greater public awareness, ensuring that alternative dispute resolution becomes the preferred mode of justice delivery in the years to come.

CHAPTER 3: THE MEDIATION ACT, 2023 – A PARADIGM SHIFT

3.1 Enactment and Objectives of the Mediation Act, 2023

The Mediation Act, 2023, was enacted to institutionalize mediation as an effective, structured, and legally recognized dispute resolution mechanism in India. Prior to its enactment, mediation operated in a fragmented manner—either through judicial referral, informal negotiations, or as part of other legal frameworks such as the Code of Civil Procedure, 1908. The Act aims to streamline and standardize mediation, ensuring its integration into India's legal system as a credible alternative dispute resolution (ADR) mechanism.

The rationale behind the Act stems from the necessity to address systemic inefficiencies within the traditional litigation framework and promote a culture of amicable dispute resolution. One of the key drivers for this legislation is the excessive backlog of cases in Indian courts. With millions of cases pending at various levels of the judiciary, mediation offers a viable alternative to ease the burden on courts and facilitate quicker dispute resolution. Additionally, the Act enhances access to justice by providing a cost-effective and time-efficient mechanism, making dispute resolution more accessible, particularly for marginalized communities and small businesses.[1093]

Another crucial aspect of the Act is its emphasis on pre-litigation mediation. By mandating mediation before initiating litigation in certain disputes, the law seeks to prevent minor disagreements from escalating into prolonged legal battles, thereby saving time, costs, and preserving relationships. Furthermore, prior to the enactment of the Mediation Act, the absence of a comprehensive legal framework resulted in inconsistencies in mediation practices across jurisdictions. The Act, along with its accompanying rules, seeks to establish uniform procedures applicable to both domestic and international mediation, ensuring greater certainty and reliability in the process.[1094]

One of the core objectives of the Act is to promote mediation as a cost-effective and time-efficient alternative to litigation. Traditional court proceedings are often expensive, time-consuming, and emotionally taxing for the parties involved. Mediation, in contrast, provides a collaborative and flexible approach that facilitates mutually beneficial resolutions while significantly reducing legal expenses and delays. The Act also grants legal recognition and enforceability to mediated settlement agreements (MSAs), ensuring that the outcomes of mediation have the same binding effect as court decrees or arbitral awards.[1095]

To further reduce the burden on courts, the Act mandates pre-litigation mediation in certain categories of disputes, requiring parties to attempt settlement before initiating formal legal proceedings. This provision aims to resolve conflicts at an early stage, preventing unnecessary litigation and expediting dispute resolution. Additionally, the Act encourages the resolution of disputes outside the courtroom, which not only alleviates judicial backlog but also promotes a less adversarial and more conciliatory approach to conflict resolution.

[1093] Mediation Act 2023 latest amendments: A complete guide, available at: https://www.barandbench.com/law-firms/view-point/mediation-act-2023-latest-amendments-guide (last visited March 10, 2025).
[1094] Mediation Act, 2023: Salient Features, available at: https://www.lexology.com/library/detail.aspx?g=0abf0e56-6f5f-4bb8-a4c5-1375f4ce5974 (last visited March 11, 2025).
[1095] Framework of the Mediation Act, 2023, available at: https://www.indialaw.in/blog/arbitration-and-conciliation/framework-of-the-mediation-act-2023/ (last visited March 9, 2025).

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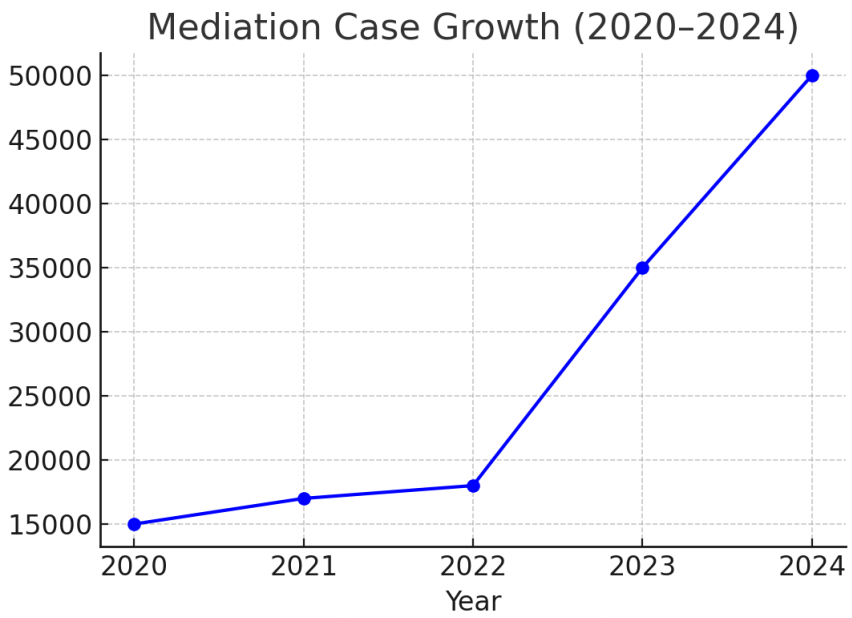
The legislation also places significant emphasis on encouraging parties to consider mediation before resorting to litigation. By promoting voluntary and mandatory mediation mechanisms, the Act seeks to instil a shift in mindset—moving away from confrontational legal battles towards constructive dialogue and compromise. To facilitate this, the Act supports the establishment of professional mediation service providers, ensuring that mediation services are conducted in a standardized and ethical manner by trained professionals.

Another critical aspect of the Act is its focus on preserving relationships and goodwill through non-hostile dispute resolution. Unlike litigation, which often results in strained relationships, mediation emphasizes collaboration, thereby fostering long-term cooperation between parties. This is particularly relevant in family disputes, business conflicts, and community-related matters, where preserving relationships is as important as resolving disputes.

Finally, to regulate and promote mediation as an institution, the Act establishes the Mediation Council of India (MCI). This statutory body is tasked with overseeing mediation services, accrediting mediators, and ensuring accessibility of mediation to individuals from all social and economic backgrounds. By creating a well-regulated mediation ecosystem, the Act ensures that mediation remains a reliable, efficient, and widely accessible dispute resolution mechanism in India.

Figure no. 2 - Estimated Growth in Mediation Cases Post-Legislation



Source: Indian Institute of Mediation, ADR Outlook 2023: Impact of New Legislation 22–25 (ADR Watch India, 2023)..

3.2 Salient features of the Act:

3.2.1 Mediation Association of India

Mediation Association of India (MAI) was founded on May 3, 2025, and the first president of MAI was Smt. Droupadi Murmu. The official inauguration also saw the First National Mediation Conference that outlined mediation as the Preferred Method of Dispute Resolution System in India.

While listening to the President of India Smt. Droupadi Murmu explaining the benefit of extending Mediation Act 2023 to the rural area where village panchayats can mediate and resolve the disputes,

CJI of India Justice Sanjiv Khanna said that unlike court litigation mediation heals the ailment that led to dispute.

The MAI has the goal of establishing and promoting mediation as the first choice for conflict resolution in India. It will also identify the best practices and procedures in mediation domain that will be useful in informing the union government.

- The following are the basic objectives of the MAI:
    1. It was meant to promote and improve the use of mediation as the preferred method of addressing the existing conflict.
    2. Strengthening the Institution with the goal of enhancing the knowledge of the rules of procedure in the field of mediation.
    3. Fostering Rural Development, Extending the Mediation Act 2023 to Rural areas and let the Village Panchayats be the first tier of mediation.
    4. Reduce the burden on Indian courts by making some of the more common forms of dispute resolution more efficient and speedy.

3.2.2 Mediator's Appointment

One of the fundamental aspects of the Mediation Act, 2023, is the appointment of a mediator. The Act provides parties with complete flexibility in selecting a mediator to facilitate the resolution of their dispute. Unlike other legal mechanisms that impose restrictions based on nationality or jurisdiction, the Act allows any individual, regardless of nationality, to be appointed as a mediator if both parties agree[1096]. Alternatively, parties can approach a mediation service provider, which will appoint a mediator based on their preferences, including qualifications and expertise. This provision ensures that disputing parties have the autonomy to select a mediator best suited to their needs, thereby fostering trust in the mediation process.

3.2.3 Mediator's Termination or Replacement

The Act provides for the termination or replacement of a mediator in cases where a conflict of interest arises. If a mediator discloses a potential conflict related to the dispute, either before or during the mediation proceedings, and one of the parties objects to their involvement, the mediator must be removed or replaced[1097]. Even in cases where no direct conflict exists, parties retain the right to request a replacement by submitting a written request to the mediator or the mediation service provider. Furthermore, mediation institutions are empowered to remove a mediator from a case if there are reasonable grounds to suspect bias or impropriety. However, in situations where a mediator is removed due to alleged misconduct or conflict of interest, they are entitled to a fair hearing to contest the decision. This provision reinforces the integrity and impartiality of the mediation process, ensuring that it remains a credible and unbiased method of dispute resolution.

3.2.4 Time-Bound Approach

Another crucial aspect of the Mediation Act, 2023, is its time-bound approach to dispute resolution. To prevent unnecessary delays and misuse of the mediation process, the Act sets a clear 120-day deadline from the first appearance before the mediator for the completion of mediation proceedings[1098]. This provision ensures that mediation remains a swift and efficient alternative to traditional litigation, where cases often drag on for years. However, recognizing the complexity of certain disputes, the Act allows for an extension of up to 60 additional days, but only with the mutual

[1096] Ss. 8(1), Mediation Act, 2023.
[1097] Ss. 10, Mediation Act, 2023.
[1098] Ss. 18, Mediation Act, 2023.

consent of both parties. This flexibility ensures that parties have sufficient time to explore potential resolutions while preventing indefinite prolongation of the mediation process.

3.2.5 Role and Conduct of the Mediator

Additionally, the Act lays down clear guidelines regarding the conduct and role of the mediator to uphold the integrity and fairness of the process. A mediator is required to maintain absolute neutrality, independence, and impartiality throughout the proceedings[1099]. They must not take sides or express personal opinions on the merits of the dispute, ensuring that all parties are treated fairly. To reinforce this standard, mediators are obligated to adhere to professional and ethical guidelines set forth under the Act, ensuring high levels of professionalism and accountability.

The mediator's primary role is to facilitate open communication between the disputing parties, enabling them to present their viewpoints, identify key issues, and explore possible compromises.[1100] Importantly, mediation under the Act remains a voluntary process, meaning that any settlement reached must be based on mutual agreement rather than coercion. The mediator cannot impose a decision on the parties, thereby ensuring that resolutions are collaborative rather than imposed. Furthermore, mediators are required to disclose any conflicts of interest or prior relationships with the parties involved, and mediation can only proceed if the parties explicitly approve the mediator's involvement.

3.2.6 Enforceability

Another key provision of the Mediation Act, 2023, is the recognition and enforceability of mediated settlement agreements. A mediated settlement agreement is a written and duly signed document where the parties involved in the mediation voluntarily agree to resolve some or all of the disputes presented before the mediator. To ensure authenticity, the agreement must be verified by all parties involved and authenticated by the mediator with their signature[1101]. This provision ensures that the outcome of mediation is formalized and legally binding, offering parties the same level of enforceability as a court decree.

The Act explicitly states that a mediated settlement agreement is final and conclusive, meaning that once an agreement is reached and executed, no further legal proceedings can be initiated on the resolved dispute. Parties can enforce the settlement under the Code of Civil Procedure, 1908, just like any other court judgment. This provision not only enhances the credibility of mediation but also provides a clear legal framework for enforcing settlements, making mediation a more viable and effective dispute resolution method.

To further strengthen the legitimacy of mediated settlements, the Act allows parties to register the agreement with an appropriate authority, such as those constituted under the Legal Services Authorities Act, 1987, or any other designated body notified by the central government. While registration is not mandatory, it provides additional benefits, including stronger evidence of authenticity, easy verification as part of the public record, and smoother enforcement if disputes arise regarding compliance. The Act grants a 180-day window for registering the agreement[1102], ensuring parties have ample time to take advantage of this optional safeguard.

By granting legal enforceability, ensuring authenticity, and providing an optional registration mechanism, the Mediation Act, 2023, enhances the efficiency and reliability of mediation as a formal

[1099] Ss. 15, Mediation Act, 2023.
[1100] Mediation Act, 2023: Salient Features, available at: https://www.lexology.com/library/detail.aspx?g=0abf0e56-6f5f-4bb8-a4c5-1375f4ce5974 (last visited March 11, 2025).
[1101] Ss. 19(3)(i), Mediation Act, 2023.
[1102] Ss. 20(2), Mediation Act, 2023.

dispute resolution process. These provisions contribute to building confidence in mediation, ensuring that settlements are not only voluntary and amicable but also legally robust and enforceable.

3.2.7 Confidentiality

Another fundamental principle upheld by the Mediation Act, 2023, is confidentiality[1103], which ensures that the mediation process remains a secure and private avenue for dispute resolution. All participants involved in mediation—including the mediator, mediation service providers, disputing parties, and any third parties such as advocates, advisors, or experts—are legally bound to maintain confidentiality regarding all matters discussed during the proceedings. This includes any statements, admissions, evidence, or advice exchanged during mediation. Additionally, no party is permitted to record audio or video proceedings, further reinforcing the privacy of the process. This provision is essential in building trust in mediation, encouraging open discussions, and ensuring that parties feel comfortable in exploring settlement options without fear of future repercussions.

However, the Act makes an important distinction regarding the confidentiality of the mediated settlement agreement itself. While discussions during mediation remain protected, the final settlement agreement is not covered under the confidentiality clause, as it forms the basis of the terms and conditions agreed upon by the parties. This ensures transparency and enforceability once a dispute is resolved. Furthermore, the Act provides exceptions to confidentiality in cases where criminal threats, fraudulent conduct, or professional misconduct by the mediator are detected. If a mediator engages in unethical behavior or if there is mens rea (criminal intent) to commit a crime, confidentiality does not apply, allowing authorities to take appropriate action.[1104]

3.2.8 Termination

The Mediation Act, 2023, also provides a clear framework for the termination of mediation and the issuance of a non-settlement report. When parties successfully reach an amicable resolution through mediation and sign a mediated settlement agreement, the mediation process is deemed concluded. The mediator's authentication of the agreement ensures its legal validity and enforceability, marking the end of the mediation proceedings.

However, in cases where no resolution is possible, the Act provides a structured procedure for terminating the mediation. If, after thorough discussions, the mediator determines that further mediation efforts will not yield a settlement, they may issue a written declaration to formally terminate the mediation. Additionally, parties involved in the dispute or the mediation service provider can also initiate the termination process by submitting a written request to withdraw from mediation. Furthermore, if mediation exceeds the prescribed time limit and no agreement is reached, the Act mandates its automatic termination. In such instances, the mediator or mediation service provider must issue a non-settlement report, duly signed by all parties, to formally document the failure to reach an agreement.[1105]

While mediated settlement agreements generally hold binding legal status, the Act also recognizes certain challenges and limitations to their enforcement. The agreement can be challenged and set aside under specific circumstances. If fraud, bribery, or other dishonest means were used to obtain the settlement, the agreement loses its legal standing. Additionally, if a party impersonated another individual or misrepresented facts during the mediation process, the settlement can be contested. Moreover, disputes that fall outside the purview of mediation, as defined under Section 6 of the Act,

[1103] Ss. 22, Mediation Act, 2023.
[1104] Mediation Act, 2023: Salient Features, available at: https://www.lexology.com/library/detail.aspx?g=0abf0e56-6f5f-4bb8-a4c5-1375f4ce5974 (last visited March 11, 2025).
[1105] The Mediation Act 2023: India Paves The Way for a New Mediation Law, available at: https://mediationblog.kluwerarbitration.com/2025/02/07/the-mediation-act-2023-india-paves-the-way-for-a-new-mediation-law-part-1/ (last visited March 11, 2025).

cannot be validly settled through mediation, and any agreement attempting to resolve such disputes may be declared void.

3.3. Implications of the Act

The Mediation Act, 2023, has had a significant impact on the Indian legal system by promoting mediation as a primary dispute resolution mechanism. One of the most notable effects of the Act is its influence on the judiciary. By diverting cases to mediation, the Act helps in reducing the overwhelming backlog of cases in Indian courts. With millions of cases pending at various levels of the judiciary, the adoption of mediation alleviates pressure on courts, enhances judicial efficiency, and facilitates quicker dispute resolution. This shift is expected to make the legal process more effective and accessible.[1106]

Beyond the judiciary, the Act also provides a substantial boost to business and investment. A predictable and effective dispute resolution mechanism is a critical factor in attracting foreign investment. By institutionalizing mediation, the Act offers businesses a reliable and structured method for resolving disputes, improving investor confidence, and enhancing India's ranking in the Ease of Doing Business Index. Investors and companies often prefer mediation over litigation due to its cost-effectiveness, confidentiality, and efficiency, making India a more attractive destination for business operations.

Another important implication of the Act is its role in the empowerment of dispute resolution. By promoting mediation as a means of resolving conflicts, the Act encourages individuals, businesses, and organizations to engage in amicable settlements rather than adversarial litigation. This fosters better relationships between disputing parties and supports the development of a mediation-centric culture in India. Unlike litigation, which is often adversarial and time-consuming, mediation provides an opportunity for constructive dialogue, preserving relationships while achieving fair resolutions.

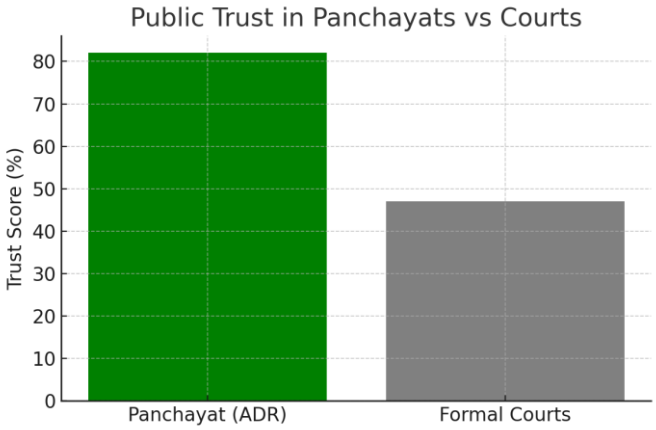
The Act also emphasizes accessibility and inclusivity in dispute resolution. Legal proceedings can be intimidating and expensive, particularly for individuals and small businesses. Mediation offers a more affordable and approachable alternative, making justice accessible to a wider population. By removing procedural complexities and creating a less formal dispute resolution environment, the Act ensures that mediation is not limited to corporate entities but is also available to individuals who may otherwise struggle to navigate the legal system.

Furthermore, the Act contributes to institutional development by fostering the establishment and expansion of mediation centres and organizations. With the professionalization of mediation practice, trained mediators and well-regulated mediation institutions will play a crucial role in ensuring the credibility and effectiveness of the mediation process. This institutional growth not only strengthens mediation as a legal practice but also promotes its adoption across various sectors of society.

The Mediation Act, 2023, thus, represents a major shift in India's approach to dispute resolution. By reducing judicial backlog, improving the business climate, empowering individuals, enhancing accessibility, and fostering institutional growth, the Act lays a strong foundation for a more efficient and conciliatory legal system. If implemented effectively, it has the potential to transform the way disputes are resolved in India, making mediation a mainstream and preferred method of dispute resolution.

Figure no. 3 - Perceived Trust in Dispute Resolution Mechanisms in Rural India

[1106] The Mediation Act, 2023, available at: https://blog.ipleaders.in/mediation-act-2023/ (last visited March 12, 2025).



Source: Rural Justice Initiative (2021). Perception Surveys on Justice Access in Indian (1985) with Explanatory Note 1–6 (United Nations 2012).

3.4 Amendments to Various Act

3.4.1 Indian Contract Act, 1872

Section 58, along with the Third Schedule of the Mediation Act, 2023, seeks to amend Section 28[1107] of the Indian Contract Act from 1872. Presently, Section 28 states that any agreement which restraints parties from taking legal action is not valid. But it does allow exceptions for agreements that solve disputes through arbitration, which are explained in Exceptions 1 and 2. The change made by the Mediation Act, 2023, adds "mediation" to these exceptions. This addition means that people can now use mediation, similar to arbitration, as an acceptable method to resolve their disputes without needing to go to court.[1108]

3.4.2 CPC, 1908

Section 59[1109], along with the Fourth Schedule of the Mediation Act, 2023, aims to alter Section 89 of the Code of Civil Procedure, 1908. The "Arbitration" sub-heading in Part V's SPECIAL PROCEEDINGS section will be removed. Section 89 of the Code of Civil Procedure, 1908 will be revised to establish a structured mediation process for resolving disputes. The Mediation Act, 2023 will apply to all Court-referred mediations.

3.4.3 Legal Services Authorities Act, 1987

Section 60, together with the Fifth Schedule of the Mediation Act, 2023, aims to amend Section 4(f) of the Legal Services Authorities Act of 1987. The Act's Section 4(f) requires the central authority to promote alternative dispute resolution (ADR) processes such as discussions, arbitration, and conciliation. The change will make mediation a recommended alternative dispute resolution option.

3.4.4 Arbitration and Conciliation Act, 1996

Section 61 of the Mediation Act, 2023, along with its Sixth Schedule, makes significant amendments to the Arbitration and Conciliation Act, 1996, especially in Section 43D. These amendments are lay down different methods of dispute resolution outside of court in India.

[1107] The Indian Contract, 1872. Sec 28.
[1108] Mediation Act, 2023: Salient Features, available at: https://www.lexology.com/library/detail.aspx?g=0abf0e56-6f5f-4bb8-a4c5-1375f4ce5974 (last visited March 11, 2025).
[1109] The Code of Civil Procedure, 1908. Sec 59

Initially, Section 43D(1) of the Arbitration and Conciliation Act required the Arbitration Council of India to promote arbitration, mediation, and conciliation as key methods for settling disputes. However, with the new Mediation Act, 2023, the words "mediation" and "conciliation" are removed from this section. This shift means that the task of promoting and overseeing mediation now belongs to a newly established group called the Mediation Council of India. This move is intended to focus more on and better manage mediation, keeping it distinct from arbitration and conciliation.

Moreover, in Section 43D(2), certain parts that previously included "conciliation" with "arbitration" now exclude "conciliation." This change is deliberate to separate the organizational and promotional duties of these different processes. Each process is now to be better managed and understood, being overseen by the appropriate specialized body.

These legislative updates aim to streamline and strengthen dispute resolution in India. By assigning specific duties to specialized bodies, the legal system seeks to make resolving disputes more effective, alleviate the burden on courts, and encourage peaceful settlement of conflicts. The amendments to Section 43D are a crucial part of this initiative, paving the way for a more efficient and organized system for resolving disputes.

3.4.5 Micro, Small and Medium Enterprises Development Act, 2006

Section 62, together with the 7th Schedule of the Mediation Act, 2023, aims to alter Section 18 of the MSMED Act, 2006. Section 18 of the MSMED Act outlines the method for seeking settlement through the Facilitation Council. The modified laws allow either party to refer a dispute over a monetary claim to the Facilitation Council. When a reference is received, the Council will either conduct mediation procedures or refer the issue to a mediation service provider under the Mediation Act, 2023.

3.4.6 Companies Act, 2013

Section 63, along with the Eighth Schedule of the Mediation Act, 2023, aims to alter Section 442 of the Companies Act, 2013. Section 442 amends the process of referring a dispute to mediation, which is governed by the Mediation Act 2023.

3.4.7 Commercial Courts Act, 2015

Section 64, together with the Ninth Schedule of the Mediation Act, 2023, aims to amend Section 12A of the Commercial Courts Act of 2015. The heading for Chapter III A and Section 12 A of the Commercial Courts Act, 2015 is suggested to alter from "Pre-Institution Mediation and Settlement" to "Pre-Litigation Mediation and Settlement."

3.4.8 Consumer Protection Act, 2019

Section 65, along with the Tenth Schedule of the Mediation Act, 2023, aims to reform the Consumer Protection Act, 2019. The substituted Section 37 states: "the District Commission or State Commission or the National Commission, as the case may be, shall either on an application by the parties at any stage of proceedings refer the disputes for settlement by mediation under the Mediation Act, 2023."

3.5 Drawbacks and Challenges

The Mediation Act of 2023 marks an important move for India to improve dispute resolution process. However, some problems within the Act may affect its success and its ability to meet international standards.

A major issue is that the Act does not include the Singapore Convention on Mediation. Although India was an early supporter of this Convention, which helps with enforcing mediated agreements across borders, the Act does not incorporate its guidelines. The Indian government explains this by saying the Convention is still new and not widely accepted globally. Yet, without these guidelines, it can be

difficult to enforce international mediation agreements in India, which might discourage foreign parties from entering into mediation with Indian entities. The Act also narrowly defines international mediation, applying only to mediations conducted within India. This means if the mediation happens outside India, it isn't covered by the Act, making it harder to enforce such international agreements and adding uncertainty to cross-border dispute resolutions.

The Act excludes certain disputes from mediation, such as criminal offenses. While this makes sense for serious crimes, it overlooks the potential for mediation to resolve lesser criminal cases, which could reduce burdens on the legal system by resolving minor offenses amicably.

Another concern is the definition of "party" in mediation. It is limited to those directly involved, excluding others who might be crucial for a complete resolution. This could lead to agreements that are incomplete or unenforceable due to missing consent from necessary parties.

The Mediation Council of India is expected to oversee mediation practices. However, it mostly consists of government appointees, lacking sufficient representation from seasoned mediators. This structure contrasts with independent professional bodies like the Bar Council of India. Without adequate expert involvement, the Council may face difficulties in effectively regulating mediation practices.

The Act permits courts to issue temporary protective orders during mediation. Unlike the Arbitration and Conciliation Act, it does not detail what these orders should include or how soon mediation should start after these orders. This lack of specifics can lead to varied interpretations and potential misuse of these interim measures.

Sections 43 and 44, which discuss community mediation, lack clarity. Vague criteria like "standing" or "societal contribution" determine mediator selection, limiting parties' choice and possibly resulting in the appointment of unqualified or biased individuals.

The Act imposes strict rules on challenging mediated settlements. Challenges can only be based on grounds such as fraud, impersonation, or corruption, and must be filed within 180 days of receiving the settlement. This deadline may be too short, especially if issues become apparent later, thus denying parties the chance to challenge problematic settlements.

Finally, the Act does not provide clear procedures for assessing mediators' independence and impartiality. While it requires mediators to be neutral and fair, it lacks specific processes to ensure these qualities. In contrast, the Arbitration and Conciliation Act offers precise guidelines for evaluating arbitrators, building trust in the system. Without similar provisions in the Mediation Act, confidence in mediator neutrality may be undermined.

Table no. 3 - Key Challenges to ADR Implementation in India

Challenge	Explanation
Lack of awareness	Limited understanding of ADR among the public
Judicial reluctance	Some judges prefer adjudication over ADR
Infrastructural gaps	Insufficient mediation centres and arbitrators
Enforcement issues	Difficulty enforcing mediated outcomes
Training deficit	Inadequate formal training for

	mediators/arbitrators

Source: Law Commission of India, Report No. 245: Strengthening ADR Mechanisms in India (Ministry of Law & Justice 2014).

3.6 Conclusion

The Mediation Act, 2023, marks a significant milestone in India's ADR landscape, providing a structured and enforceable mechanism for mediation. By distinguishing mediation from conciliation and arbitration, the Act aims to enhance its credibility and usage. While it is expected to reduce litigation burdens and improve access to justice, successful implementation will require robust training, institutional support, and public awareness. Continuous evaluation and refinement of the Act will be essential in ensuring its effectiveness in resolving disputes efficiently and amicably.

CHAPTER 4: LANDMARK JUDGMENTS SHAPING MEDIATION JURISPRUDENCE IN INDIA

4.1 M.R. Krishna Murthi v. New India Assurance Co. Ltd. (2019)[1110]

In the landmark case of M.R. Krishna Murthi v. New India Assurance Co. Ltd. (2020), the Supreme Court underscored the necessity of a robust mediation framework to alleviate the burden on courts and facilitate efficient dispute resolution. This judgment aimed to instill progressive thinking and reinforce the significance of Alternative Dispute Resolution (ADR) mechanisms in expediting the resolution of disputes. The Supreme Court's recommendations were designed to reduce the hardship that victims endure due to the protracted judicial process and inadequacies in policy implementation.

The case primarily revolved around the appellant, who had suffered injuries leading to a disability. The Supreme Court, after scrutinizing various precedents, emphasized that courts must consider the victim's future prospects when determining compensation for loss of future income. The Court acknowledged that while the appellant was currently practicing as a lawyer, his earning potential was constrained due to the impairment, placing him at a disadvantage compared to his contemporaries. This consideration was crucial in ensuring just compensation that factored in the long-term impact of the disability.

The Court deliberated on the computation of loss of future income, eventually deciding to enhance the compensation amount. Initially, the future income loss was assessed at Rs.2000 per month. However, upon recognizing the limitations imposed on the appellant's professional growth, the Court revised this figure to Rs.5000 per month. Applying a multiplier of 18 to this revised amount, the total compensation granted to the appellant was calculated at Rs.10,80,000/-. This adjustment was significant as it set a precedent for acknowledging the broader implications of disability on an individual's career trajectory and financial stability.

Beyond the financial aspects, the Supreme Court's judgment carried substantial implications for the broader legal landscape concerning dispute resolution. The Court's emphasis on mediation and ADR mechanisms indicated a shift towards reducing litigation burdens and promoting alternative avenues for resolving disputes efficiently. The ruling recognized that lengthy court procedures often exacerbate the suffering of victims, prolonging their financial and emotional distress. By advocating for a more structured and effective mediation framework, the judgment reinforced the need for institutional reforms that would enhance access to justice while alleviating congestion in the judicial system.

[1110] M.R. Krishna Murthi v. New India Assurance Co. Ltd., [2019] 3 S.C.R. 1088

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The case also served as a reminder of the necessity for a victim-centric approach in adjudicating compensation claims. The Court's nuanced evaluation of the appellant's professional limitations underscored the importance of contextual assessments in determining fair compensation. This approach reflects an evolving jurisprudence that prioritizes equitable relief and acknowledges the real-world implications of judicial determinations on individuals' lives.

The decision in M.R. Krishna Murthi v. New India Assurance Co. Ltd. (2020) thus holds considerable significance in multiple dimensions. It not only set a precedent in compensation jurisprudence but also reaffirmed the judiciary's commitment to strengthening ADR mechanisms as a viable alternative to conventional litigation. By doing so, the Supreme Court reinforced the need for legal frameworks that balance efficiency with fairness, ultimately ensuring that justice is accessible and responsive to the needs of those who seek it.

4.2 K. Srinivas Rao v. D.A. Deepa (2013)[1111]

In the case of *K. Srinivas Rao v. D.A. Deepa* (2013), the dispute arose from a deeply contentious divorce battle between a husband and wife. The case involved allegations of cruelty under Section 498A of the Indian Penal Code (IPC), a provision that criminalizes cruelty against a married woman by her husband or his relatives. Given the emotionally charged nature of such cases, the legal proceedings had become adversarial, intensifying stress for both parties involved.

A significant question before the **Supreme Court** was whether **mediation could serve as an effective mechanism** for resolving matrimonial disputes and reducing the emotional and financial strain associated with prolonged litigation. The Court recognized that family disputes often escalate due to **miscommunication, misunderstandings, and the rigid stance of parties**, making litigation an exhausting and sometimes counterproductive process.

In its ruling, the Supreme Court strongly advocated for mediation as a **preferable alternative to adversarial litigation** in family matters. It stressed that courts should actively encourage mediation in matrimonial cases, as it offers a more **amicable and less confrontational method** of dispute resolution. The judgment underscored the **importance of reconciliation** in family disputes and directed lower courts to promote mediation, particularly in cases where there is a possibility of salvaging relationships or reaching mutually acceptable settlements. This ruling reinforced the role of **court-annexed mediation centres** in handling sensitive matrimonial conflicts, recognizing that a structured mediation process could help parties **communicate effectively, reduce hostility, and find common ground** without escalating conflicts through prolonged court battles.[1112]

4.3 Vidya Drolia v. Durga Trading Corporation (2020)[1113]

The case of Vidya Drolia v. Durga Trading Corporation (2020) was a significant judgment by the Supreme Court of India that addressed the concept of arbitrability of disputes, particularly concerning landlord-tenant conflicts under the Transfer of Property Act (TPA). The case dealt with the fundamental question of whether disputes related to tenancy could be resolved through arbitration or if they were exclusively triable by civil courts or special forums. The ruling aimed to establish a clear framework for determining when a matter can be referred to arbitration and when it falls within the domain of judicial courts.

The dispute arose when Durga Trading Corporation sought to evict Vidya Drolia from a rented property. The lease agreement between the parties contained an arbitration clause, and the respondent sought to enforce it to resolve the dispute outside the regular court system. Vidya Drolia,

[1111] *K. Srinivas Rao v. D.A. Deepa,* AIR 2013 SUPREME COURT 2176

[1112] Civil Appeal No. 1794 of 2013 Arising out of Special Leave Petition (Civil) No. 4782 of 2007 Case: K. Srinivas Rao Vs D. A. Deepa. Supreme Court (India), available at: https://vlex.in/vid/k-srinivas-rao-vs-571663510 (last visited March 11, 2025).

[1113] Vidya Drolia v. Durga Trading Corporation, AIR 2019 SUPREME COURT 3498.

on the other hand, contended that tenancy matters, being governed by the TPA, were non-arbitrable due to the statutory protections granted to tenants. The case eventually reached the Supreme Court, which was tasked with resolving whether the arbitration clause in a tenancy agreement was valid and enforceable under the law.

In its judgment, the Supreme Court revisited the principles laid down in previous cases such as Booz Allen & Hamilton Inc. v. SBI Home Finance Ltd.[1114] and Himangni Enterprises v. Kamaljeet Singh Ahluwalia[1115]. These cases had previously established that disputes involving special statutes that confer exclusive jurisdiction on particular courts could not be arbitrated. The Court examined the interplay between the rights of landlords and tenants under the TPA and the broader principles of arbitrability in India.

A key contribution of this case was the establishment of a fourfold test to determine the arbitrability of disputes. The test considered whether the dispute was a right in rem or a right in personam, whether it related to an inalienable sovereign function of the state, whether it was expressly or impliedly non-arbitrable under the law, and whether the subject matter of the dispute affected third-party rights or public interest. Applying this test, the Supreme Court held that tenancy disputes governed by the TPA were arbitrable unless they were covered under rent control legislations that provided exclusive jurisdiction to specific forums.

The Court also addressed the issue of who has the authority to decide arbitrability under Section 8 and Section 11 of the Arbitration and Conciliation Act, 1996. It ruled that the role of courts at the referral stage is limited but not entirely mechanical. Courts must conduct a prima facie examination to determine whether an arbitration agreement exists and whether the dispute falls within its scope. This marked a shift from earlier judgments that suggested courts should refer matters to arbitration with minimal scrutiny.

The decision in Vidya Drolia v. Durga Trading Corporation reaffirmed India's pro-arbitration stance while maintaining judicial oversight in cases where statutory rights and public policy considerations were involved. The ruling clarified that unless there is an express statutory bar or the dispute is of such a nature that it cannot be resolved privately, arbitration should be encouraged as a means of dispute resolution. By doing so, the Supreme Court struck a balance between upholding contractual freedom and ensuring that statutory protections are not circumvented through arbitration clauses.

4.4 Vikram Bakshi v. Connaught Plaza Restaurants Ltd. (2019)[1116]

The case of Vikram Bakshi v. Connaught Plaza Restaurants Ltd. (2019) was a significant corporate dispute that emphasized the role of mediation in resolving high-stakes commercial conflicts. The dispute arose between Vikram Bakshi, the Indian joint venture partner of McDonald's India, and the global fast-food giant. The conflict stemmed from disagreements over the management and ownership of Connaught Plaza Restaurants Ltd. (CPRL), the entity responsible for operating McDonald's outlets in northern and eastern India. What began as a business partnership eventually turned into a prolonged legal battle, leading to multiple litigations in different forums.

Vikram Bakshi was the managing director of CPRL until McDonald's decided not to re-elect him in 2013. This decision led to a breakdown in relations between the parties, with Bakshi challenging his removal and alleging that McDonald's was attempting to oust him from the business unfairly. The dispute escalated, with Bakshi taking the matter to the National Company Law Tribunal (NCLT), accusing McDonald's of oppression and mismanagement. In response, McDonald's terminated its franchise

[1114] Booz Allen & Hamilton v. SBI Home Finance (2011) 5 SCC 532
[1115] Himangni Enterprises v. Kamaljeet Singh Ahluwalia, (2017) 10 SCC 706
[1116] Vikram Bakshi v. Connaught Plaza Restaurants Ltd., [2017] 140 CLA 142

agreement with CPRL in 2017, further complicating the situation as it effectively stripped CPRL of its rights to operate McDonald's outlets in the region.

The conflict had severe business implications, with multiple McDonald's outlets shutting down due to legal uncertainty. Customers and employees were caught in the crossfire as the standoff prolonged. Given the complexity of the dispute, which involved corporate governance, contractual obligations, and brand control, the key question that emerged was whether mediation could serve as an effective tool to resolve such high-profile corporate conflicts. Traditionally, corporate disputes of this nature tend to be litigated over years, leading to financial losses and reputational damage for both parties. Mediation, however, offered a potentially quicker and less adversarial resolution.

Recognizing the prolonged nature of the dispute and its wider impact, the Delhi High Court referred the matter to mediation. The decision was a pivotal moment in Indian corporate dispute resolution, as it signalled judicial encouragement for alternative dispute resolution mechanisms, even in cases involving multinational corporations and significant financial stakes. The mediation process allowed both parties to negotiate privately and find a mutually agreeable solution without engaging in further adversarial litigation.

Through mediation, McDonald's and Vikram Bakshi reached a settlement in 2019. As part of the resolution, McDonald's agreed to buy out Bakshi's stake in CPRL, thereby regaining full control over its operations in northern and eastern India. This agreement brought an end to the long-drawn legal battle and enabled McDonald's to restructure its operations in the region. The settlement also highlighted the advantages of mediation in corporate disputes, demonstrating that even deeply contentious conflicts could be resolved amicably with the right negotiation framework.

The successful mediation in this case served as a precedent for future corporate disputes, reinforcing the idea that high-profile commercial disagreements need not always be settled through litigation. The case showcased how mediation could offer a pragmatic and efficient solution, reducing costs, saving time, and preserving business relationships where possible. It also illustrated that courts are willing to endorse mediation as a viable dispute resolution method, particularly in cases where prolonged litigation could harm business continuity and stakeholder interests.

4.5 B.S. Krishnamurthy v. B.S. Nagaraj[1117] (2010)

The case of B.S. Krishnamurthy v. B.S. Nagaraj (2010) revolved around a long-standing family dispute involving matrimonial issues, particularly divorce and property-related conflicts. The matter had been in litigation for a considerable period, with both parties entangled in legal battles that had strained their relationship and prolonged the resolution of their grievances. Given the sensitive nature of the dispute, the Supreme Court was faced with the question of whether mediation could serve as an effective alternative to conventional litigation in such family matters.

The case highlighted the inherent complexities that arise in matrimonial and property disputes within families. Legal proceedings in such cases often exacerbate emotional distress, making it difficult for the parties involved to arrive at a constructive resolution. Courts, while bound by legal principles, often recognize the importance of alternative dispute resolution mechanisms in cases where emotions run high and relationships need to be preserved. In this context, the Supreme Court sought to explore the potential of mediation as a viable solution to mitigate the adversarial nature of litigation and facilitate an amicable settlement.

The Supreme Court, in its judgment, underscored the significance of mediation in resolving family disputes. The Court observed that matrimonial conflicts, particularly those involving divorce and

[1117] B.S. Krishnamurthy v. B.S. Nagaraj, AIR 2011 SUPREME COURT 794

property division, often become more complicated when handled through prolonged litigation. Legal battles tend to deepen animosities between the parties, making reconciliation difficult and leading to irreversible damage to familial relationships. The adversarial process, by its very nature, positions the parties as opponents, often resulting in a zero-sum game where one party's gain is perceived as the other's loss. The Court recognized that mediation, on the other hand, provides a platform for dialogue, allowing the parties to communicate their grievances and negotiate a mutually acceptable solution.

Encouraging the parties to resolve their differences through mediation, the Supreme Court emphasized that this method could not only save time and legal costs but also preserve relationships that might otherwise be permanently severed by litigation. Mediation allows for a more flexible and informal approach, where solutions are tailored to the specific needs and concerns of the parties rather than being dictated by rigid legal frameworks. By fostering a spirit of compromise and mutual understanding, mediation can help families navigate disputes with a greater degree of sensitivity and cooperation.

The judgment also reinforced the growing recognition of mediation as a crucial tool in the Indian legal system. While courts remain the ultimate arbiters of legal disputes, there is a conscious effort to promote alternative dispute resolution mechanisms, particularly in cases where personal relationships are at stake. The Supreme Court's endorsement of mediation in this case aligned with its broader objective of reducing the burden on the judiciary and ensuring that justice is delivered in a manner that prioritizes reconciliation over confrontation.

CHAPTER 5: COMPARATIVE STUDY OF MEDIATION LAWS – INDIA AND GLOBAL PERSPECTIVES

5.1 Introduction

Intellectual property disputes present unique challenges that traditional litigation often struggles to address effectively. Alternative Dispute Resolution (ADR) mechanisms—including arbitration, mediation, and conciliation—have emerged as valuable tools in resolving IP conflicts, offering confidentiality, expertise, cost-efficiency, and flexibility that court proceedings typically cannot match. As IP assets become increasingly central to global commerce, finding efficient resolution pathways has become paramount for businesses and creators alike.

This comparative analysis examines how ADR systems for IP disputes function across leading jurisdictions such as the United States, European Union, and Singapore, contrasting them with India's evolving framework. By exploring these international models, we can identify structural elements, procedural innovations, and policy approaches that have proven successful in addressing the specialized nature of IP conflicts. Each jurisdiction has developed distinctive responses to common challenges, creating a rich tapestry of approaches from which valuable insights can be drawn.

For India, at a crucial juncture in its IP development, studying these international best practices is particularly timely. Despite significant advances in its IP protection regime, India continues to face challenges in dispute resolution efficiency, especially concerning specialized matters like patent infringement, trademark conflicts, and copyright disputes. The current system, while improving, often results in lengthy proceedings that undermine the time-sensitive nature of many IP assets.

International jurisdictions have pioneered specialized institutions, developed IP-specific ADR protocols, and created supportive judicial frameworks that merit careful examination. These models offer practical lessons on balancing public interest with private rights, ensuring enforcement of ADR outcomes, and developing specialized expertise—all critical issues for India's evolving system.

By assessing what has worked effectively elsewhere and understanding the contextual factors behind successful implementations, India can develop a more robust ADR framework tailored to its unique legal culture and economic needs. This approach allows for informed adaptation rather than wholesale importation of foreign systems, recognizing that effective reform must be grounded in local realities while drawing inspiration from global excellence.

Through this comparative lens, it becomes easy to identify strategic pathways for India to enhance its IP dispute resolution mechanisms, ultimately strengthening its position in the knowledge economy while providing creators and innovators with the efficient protection they require.

5.2 USA

The United States has developed one of the most sophisticated alternative dispute resolution frameworks for intellectual property disputes globally, with institutional backing and judicial support that has evolved over decades. The American Arbitration Association (AAA) stands as a cornerstone institution in this landscape, offering specialized protocols tailored to the unique challenges presented by intellectual property conflicts. Established in 1926, the AAA has refined its approach to IP disputes through its International Centre for Dispute Resolution (ICDR), which administers both domestic and international cases involving patents, trademarks, copyrights, and trade secrets.

The AAA's specialized IP protocols address the distinctive nature of these disputes by offering parties flexibility in selecting arbitrators with subject-matter expertise—a critical factor when disputes involve complex technical or scientific questions. These protocols provide streamlined procedures for different categories of IP disputes, including expedited procedures for time-sensitive matters like injunctive relief in trademark infringement cases. The AAA maintains a roster of specialized neutrals with backgrounds spanning various IP disciplines and industries, ensuring that decision-makers possess the technical understanding necessary for informed resolution.[1118]

Beyond procedural rules, the AAA has implemented innovative approaches to discovery in IP arbitration, balancing the need for adequate information disclosure with efficiency concerns. Its protocols typically limit document production and deposition requirements compared to federal litigation, while still ensuring parties can access necessary evidence. This approach has proven particularly valuable in patent disputes where the costs of discovery in conventional litigation can be expensive. The AAA also offers emergency arbitrator provisions, allowing parties to seek urgent interim measures without waiting for a full tribunal to be constituted—a feature increasingly important in fast-moving IP markets where time-to-resolution directly impacts business value.

The World Intellectual Property Organization (WIPO) Arbitration and Mediation Center has established a significant presence in the United States, complementing the AAA's services with its international expertise. While headquartered in Geneva, WIPO maintains operations in the U.S. and administers numerous IP disputes involving American parties. WIPO's specialized focus on intellectual property gives it particular credibility in handling complex cross-border IP matters. Its rules were specifically designed for IP and technology disputes, with provisions addressing confidentiality and technical evidence that are particularly relevant to innovative industries.

WIPO's U.S. operations have gained traction through collaboration with American industry associations, particularly in sectors like biotechnology, pharmaceuticals, and entertainment. These partnerships have helped standardize ADR clauses in IP licensing agreements and research collaborations. WIPO has also developed specialized procedures for specific IP contexts, such as its Film and Media Mediation procedure and its expedited arbitration rules for FRAND (Fair, Reasonable,

[1118] S. I. Strong, "Navigating the Borders between International Commercial Arbitration and U.S. Federal Courts," Journal of Dispute Resolution (2012).

and Non-Discriminatory) licensing disputes in standard-essential patents—an area of increasing importance in telecommunications and electronics sectors.

The judicial attitude toward ADR in IP disputes has evolved significantly in the United States. Federal courts increasingly recognize and enforce arbitration agreements in IP contexts, even in areas once considered non-arbitrable. The U.S. Supreme Court has consistently upheld the enforceability of arbitration clauses, establishing a strong pro-arbitration policy. In landmark cases like Mitsubishi Motors v. Soler Chrysler-Plymouth[1119], the Court established that even antitrust claims—which often involve IP elements—could be subject to arbitration. This judicial support extends to enforcement of arbitral awards, with courts generally limiting their review to procedural fairness rather than substantive outcomes.

However, certain limitations remain regarding the arbitrability of IP disputes in the United States. While infringement and licensing disputes are widely accepted as arbitrable, questions about patent validity have presented more complex jurisdictional questions. Courts have generally held that while arbitrators may rule on patent validity for purposes of the dispute between parties, such determinations do not bind the Patent and Trademark Office or third parties.[1120] This approach balances respect for party autonomy with protection of the public interest in patent quality.

Enforcement mechanisms for ADR outcomes in IP disputes benefit from the comprehensive legal framework provided by the Federal Arbitration Act and state arbitration laws. U.S. courts routinely enforce arbitral awards in IP disputes, including orders for specific performance, royalty payments, and confidentiality protections. The New York Convention further strengthens enforcement of international awards, making the United States an attractive venue for global IP dispute resolution. Judicial willingness to enforce emergency arbitrator decisions and interim measures has proven particularly valuable in rapidly evolving IP disputes where immediate relief from infringement may be critical.

The U.S. system is not without challenges, particularly regarding the interface between private ADR proceedings and public interest in certain IP determinations. Nevertheless, the sophisticated framework established through institutions like the AAA and WIPO, combined with supportive judicial attitudes, has created a robust ecosystem for resolving IP disputes outside traditional courts. This system continues to evolve, with recent innovations including specialized pharmaceutical patent arbitration procedures and increased use of online dispute resolution technologies, ensuring the U.S. remains at the forefront of efficient IP dispute resolution.

5.3 Singapore

Singapore has become an important player in solving international disputes by improving its systems for arbitration and mediation. The Singapore International Arbitration Centre (SIAC) plays a key role in this success, gaining global recognition for being efficient, neutral, and well-supported by the law. Supporting SIAC is the Singapore Convention on Mediation, introduced in 2019, marking a significant step in ensuring international mediation agreements are recognized and enforced.

Since starting in 1991, SIAC has grown into a top institution for managing international commercial arbitration. It is known for being fair, efficient, and committed to upholding the law. SIAC's rules are designed to handle the complex nature of disputes between countries, offering parties a trustworthy way to resolve conflicts outside traditional courts. The diverse range of cases SIAC handles from around the globe emphasizes its status as a trusted venue for dispute resolution[1121].

[1119] Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc., 473 U.S. 614 (1985)
[1120] S. I. Strong, "Navigating the Borders between International Commercial Arbitration and U.S. Federal Courts," Journal of Dispute Resolution (2012).
[1121] Alternatives to trial, available at: https://www.judiciary.gov.sg/alternatives-to-trial (last visited Apr 3, 2025).

The Singapore Convention on Mediation, officially the United Nations Convention on International Settlement Agreements Resulting from Mediation, represents a major advancement in alternative dispute resolution. Adopted in late 2018 and open for signature in 2019, it provides a standard method to enforce international mediation agreements. This is crucial as previously, enforcing these agreements across borders was challenging. By offering a standardized approach, the Convention enhances the reliability and predictability of mediation compared to court cases and arbitration.

SIAC and the Singapore Convention work together, illustrating Singapore's comprehensive approach to dispute resolution. SIAC offers a structured format for arbitration, while the Convention encourages mediation, which focuses on cooperation and mutual agreement. This dual system accommodates the various needs of international parties, offering flexibility in choosing the best method to resolve disputes.[1122] Additionally, Singapore's legal framework supports this strategy, with courts that honor the outcomes of both arbitration and mediation.

Singapore demonstrates its commitment to creating a favorable environment for dispute resolution by continuously refining its legal frameworks. By adopting international conventions and investing in institutions like SIAC, Singapore establishes itself as a leader in the global dispute resolution arena. This strategic focus benefits international parties seeking reliable conflict resolution methods while reinforcing Singapore's reputation for legal excellence and innovation.[1123]

Singapore's legal system provides robust support for ADR in IP disputes through several key mechanisms. The Arbitration Act and International Arbitration Act establish clear rules for arbitral proceedings and enforcement, with specific provisions addressing the arbitrability of IP disputes. The Mediation Act enhances the status of mediated settlements by providing mechanisms for their enforcement as court orders. Singapore courts consistently demonstrate a pro-arbitration stance, respecting the autonomy of arbitral tribunals and limiting intervention to situations of procedural irregularity or public policy concerns. The Intellectual Property Office of Singapore (IPOS) works in conjunction with ADR institutions, offering streamlined pathways from administrative proceedings to mediation or arbitration.

Several factors have contributed to Singapore's emergence as the preferred destination for IP dispute resolution in Asia. Singapore's strategic geographic location and central position in Southeast Asia makes it accessible to parties throughout the region and beyond. Singapore's reputation for political neutrality and independence inspires confidence among international parties seeking a fair venue. The prevalence of English alongside various Asian languages facilitates proceedings involving parties from diverse linguistic backgrounds. Purpose-built facilities like Maxwell Chambers provide state-of-the-art hearing venues specifically designed for international arbitration and mediation. The establishment of the Singapore International Commercial Court with IP expertise offers another forum that complements the ADR ecosystem.

Singapore's sophisticated approach to ADR for IP disputes represents a thoughtful integration of specialized institutions, customized protocols, and supportive legal frameworks. By addressing the unique characteristics of IP conflicts through tailored dispute resolution mechanisms, Singapore has created an environment where complex IP disputes can be resolved efficiently, confidentially, and with technical precision. The synergy between SIAC's specialized arbitration protocols, SMC's relationship-preserving mediation approach, and the overarching legal framework demonstrates Singapore's commitment to providing comprehensive solutions for IP dispute resolution. As

[1122] Harmony as Ideology, Culture, and Control: Alternative Dispute Resolution in Singapore, available at: https://search.informit.org/doi/pdf/10.3316/informit.809657906830068 (last visited Apr 2, 2025).
[1123] About the Alternative Dispute Resolution ("ADR") Scheme, available at: https://www.imda.gov.sg/infocomm-regulation-and-guides/infocomm-regulation/alternative-dispute-resolution (last visited Apr 2, 2025).

intellectual property continues to grow in economic importance globally, Singapore's established position as Asia's premier IP ADR hub offers valuable reassurance to businesses and innovators seeking predictable and effective means of protecting their intellectual assets.

Ultimately, Singapore's approach in integrating arbitration and mediation—exemplified by the prominence of SIAC and the adoption of the Singapore Convention—underlines its status as a forward-looking jurisdiction in international dispute resolution. By providing strong, efficient, and enforceable ways to solve cross-border disputes, Singapore sets a standard for other nations aiming to enhance their dispute resolution frameworks and attract international business.

5.4 Australia

Over the past several decades, Australia's legal system has seen major changes, with Alternative Dispute Resolution (ADR) now playing a key role. This shift aims to make justice more accessible, cut down on court costs, and encourage friendly settlements instead of courtroom battles.[1124]

Australia's use of ADR dates back to the early 1900s, especially when the Commonwealth Court of Conciliation and Arbitration was set up in 1904. This court was important for resolving disputes between workers and employers, which helped establish a culture that prefers negotiated solutions over legal fights.[1125]

Interest in informal dispute resolution grew in the 1970s. Courts began recognizing the benefits of ADR and started incorporating it into the legal process. By the 1990s, ADR, including mediation and case reviews, became more common in court. Courts could refer cases to ADR without both parties agreeing first, helping to clear the backlog of cases waiting for trial.

A key development was the Family Law Reform Act of 1995, which emphasized mediation in family disputes, especially for child custody after separation. This law promoted trying mediation before going to court to create a less confrontational process. Amendments in 2006 required serious efforts to settle disputes before court, except in cases of risks like family or child abuse.

To ensure mediation is done well, the National Mediator Accreditation System (NMAS) was launched in 2008, setting standards for mediator training and practice. The Mediator Standards Board monitors this, ensuring uniform professional standards across Australia. The upcoming Australian Mediator and Dispute Resolution Accreditation Standards (AMDRAS) in 2024 will further enhance mediation quality.

Australian courts have adopted ADR to varying degrees. The Supreme Court of New South Wales, for instance, uses ADR in civil litigation by often referring matters to mediation. The Family Court of Australia also provides ADR services like conciliation and counseling to help resolve disputes.[1126]

Australia has developed a robust alternative dispute resolution framework for intellectual property matters that emphasizes efficiency and specialized expertise. The Federal Court of Australia, which has jurisdiction over most IP disputes, actively encourages ADR through its practice directions and case management procedures. The court offers court-annexed mediation services with registrars who possess IP expertise, while also referring parties to private mediators when appropriate. IP Australia, the government body responsible for administering intellectual property rights, provides mediation and other ADR services for trademark opposition proceedings and patent disputes through its Hearing Office. The World Intellectual Property Organization (WIPO) Arbitration and Mediation Centre also maintains a presence in Australia, offering specialized neutral services for technology and IP disputes. Australia's legal framework supports these ADR mechanisms through the Civil Dispute

[1124] Alternative dispute resolution, available at: https://www.ag.gov.au/legal-system/alternative-dispute-resolution (last visited Apr 3, 2025).
[1125] Alternative Dispute Resolution (ACT, NT, QLD, SA, TAS, or WA), available at: https://justiceconnect.org.au/resources/alternative-dispute-resolution-vic-2/ (last visited Apr 2, 2025).
[1126] Assisted Dispute Resolution, available at: https://www.fedcourt.gov.au/services/ADR (last visited Apr 2, 2025).

Resolution Act 2011, which requires parties to take genuine steps to resolve disputes before commencing litigation. This comprehensive approach has resulted in a high settlement rate for IP disputes before trial, with Australian courts recognizing and enforcing both domestic and international arbitration awards related to intellectual property matters.

Nevertheless, Australia's experience with ADR offers valuable insights for other countries. It demonstrates how ADR can reduce court caseloads, lower costs, and encourage collaborative problem-solving. Ensuring mediators meet high standards also adds credibility.

Countries like India, exploring better dispute resolution methods, can learn from Australia's path. Strong laws, proper infrastructure, and maintaining professional standards are crucial for promoting ADR. By leveraging Australia's successes and understanding its challenges, other nations can tailor solutions to fit their legal and cultural contexts, making justice more accessible and effective.

5.5 European Union

The development of Alternative Dispute Resolution (ADR) mechanisms in the United Kingdom and the European Union represents a significant evolution in addressing intellectual property disputes outside traditional court settings. Since the early 1990s, when the UK established its first family and community mediation centres, ADR practices have expanded substantially to encompass specialized approaches for resolving complex IP conflicts.[1127] This evolution gained meaningful momentum following Lord Woolf's landmark "Access to Justice" report in 1996, which advocated for mediation as a preliminary step before litigation and emphasized that court proceedings should be considered only as a last resort. This philosophical shift has had profound implications for how intellectual property disputes are conceptualized and resolved throughout both jurisdictions.[1128]

The UK's advancement of ADR for IP disputes has been characterized by progressive institutional development and legislative support. While initial ADR efforts focused primarily on family law matters, as evidenced by the Family Law Act of 1996, the principles established—mandatory mediation attempts preceding court representation—provided an important template for subsequent expansion into intellectual property conflicts.[1129] The establishment of quality standards for ADR practitioners by the Lord Chancellor in 1999, focusing on training, transparency, and accessibility, laid further groundwork for specialized IP mediators and arbitrators. These professional standards have proven particularly important in IP contexts, where technical complexity and industry-specific knowledge are often prerequisites for effective dispute resolution.

Intellectual property disputes in the UK benefit significantly from the framework established by the Tribunals, Courts and Enforcement Act of 2007, which introduced alternative channels for resolving disputes involving governmental bodies. This legislation has been particularly relevant for patent and trademark oppositions involving the UK Intellectual Property Office, offering streamlined procedures that avoid the time and expense of traditional litigation. The Act's influence on First-tier Tribunals has created more flexible pathways for addressing administrative aspects of IP disputes, including registration challenges and opposition proceedings. These mechanisms represent a practical acknowledgment that not all IP conflicts require full judicial intervention, and many can be resolved through more targeted and specialized processes.

The application of Med-Arb techniques has gained particular traction in UK intellectual property disputes. This hybrid approach, where parties first attempt mediation and subsequently move to arbitration if necessary, offers IP rights holders a graduated response to conflicts. The process begins

[1127] Kimberley Chen Nobles, "Emerging Issues and Trends in International Arbitration," 43(5) California Western International Law Journal (2012).
[1128] Lhuillier, Julien, "The quality of penal mediation in Europe," Strasbourg, Council of Europe, European Commission for the Efficiency of Justice, Working Group on Mediation (2007).
[1129] Liebmann and Marian, "History and Overview of Mediation in the UK," *Mediation in context* (2000)

with the collaborative problem-solving environment of mediation, which can preserve business relationships and enable creative licensing solutions. If mediation proves unsuccessful, the matter advances to arbitration, where a neutral third party with IP expertise renders a binding decision. This approach has proven especially valuable for technology licensing disputes, cross-border trademark conflicts, and patent infringement cases where maintaining confidentiality is paramount.

The UK Arbitration Act of 1996 provides robust support for arbitration of IP disputes by emphasizing party autonomy, procedural flexibility, and limited court intervention. These principles align well with the needs of IP stakeholders, who often require customized approaches that accommodate the technical complexities of their disputes. The Act establishes a foundation for enforceable arbitration agreements and awards while preserving confidentiality—a critical consideration for disputes involving trade secrets, proprietary technologies, or sensitive commercial information. The Commercial Court plays a supportive role in the arbitration process, providing oversight and enforcement mechanisms while respecting the autonomy of arbitral proceedings. Recent judicial developments have expanded the court's authority to involve third parties connected to arbitration cases, enhancing the efficiency and effectiveness of the process for complex IP disputes that often involve multiple stakeholders or interrelated rights.

In the European Union, Directive 2008/52/EC has been instrumental in promoting mediation for cross-border disputes, including those involving intellectual property rights. The Directive establishes fundamental requirements for Member States regarding the enforceability of mediated settlements, confidentiality protections, and the suspension of limitation periods during mediation. These provisions have enhanced the predictability and reliability of mediation outcomes across EU jurisdictions, making mediation a more attractive option for resolving multinational IP disputes.[1130] The Directive's focus on reducing judicial caseloads also reflects practical recognition that courts alone cannot efficiently manage the increasing volume and complexity of IP conflicts in the digital economy.

The EU's approach to ADR for IP disputes extends beyond the Mediation Directive to encompass specialized mechanisms for particular types of intellectual property. For example, the EU Intellectual Property Office (EUIPO) offers mediation services specifically designed for trademark and design disputes, including oppositions, cancellations, and appeals. These services provide targeted assistance from mediators with expertise in European trademark and design law, facilitating efficient resolution of registration-related conflicts.[1131] Similarly, the Unified Patent Court Agreement includes provisions for a Patent Mediation and Arbitration Centre, acknowledging the importance of non-judicial resolution options for patent disputes within the unitary patent system.

Consumer-focused ADR mechanisms in the EU also have implications for certain intellectual property matters, particularly those involving digital content, online services, and e-commerce. While Directive 2008/52/EC established a framework for cross-border mediation generally, the implementation of ADR methods for consumer disputes has been left largely to individual Member States. This has resulted in varied approaches across the EU, with some jurisdictions developing specialized ADR processes for consumer-facing IP issues such as digital rights management, content licensing, and software disputes. These mechanisms often emphasize accessibility, affordability, and expeditious resolution—characteristics that are particularly valuable for lower-value or straightforward IP conflicts.

The integration of ADR into IP enforcement strategies across the UK and EU reflects growing recognition that traditional litigation may not always provide optimal outcomes for knowledge-based

[1130] De Palo, Giuseppe, and Mary B Trevor, (eds.), "EU mediation law and practice," (Oxford University Press, 2012).
[1131] Lhuillier, Julien, "The quality of penal mediation in Europe," *Strasbourg, Council of Europe, European Commission for the Efficiency of Justice, Working Group on Mediation* (2007).

industries. The technical complexity, global nature, and relationship dynamics typical of many IP disputes make them particularly suitable for ADR approaches.[1132] Mediation offers parties an opportunity to craft bespoke solutions that might include cross-licensing arrangements, technology transfers, coexistence agreements, or market allocations—creative outcomes that courts are often not positioned to impose. Arbitration provides a forum where technically qualified decision-makers can efficiently assess patent validity or infringement questions, often reaching conclusions more quickly and with greater subject-matter insight than generalist judges.[1133]

The confidentiality inherent in most ADR processes provides an additional advantage for IP disputes, where public disclosure of proprietary information or business strategies could compromise competitive positions or undermine the value of trade secrets. This protective aspect of ADR is particularly significant given that conventional court proceedings typically create public records that might expose sensitive technical details or commercial information. The private nature of arbitration and mediation allows parties to resolve their conflicts while maintaining appropriate confidentiality around the subject matter in dispute.[1134]

The United Kingdom and European Union have developed increasingly sophisticated frameworks for alternative dispute resolution of intellectual property conflicts. Through legislative initiatives, institutional support, and professional standards, both jurisdictions have created viable pathways for resolving IP disputes outside traditional courts. These developments reflect a pragmatic recognition that the unique characteristics of intellectual property—its technical complexity, international dimension, and relationship to innovation economies—often benefit from specialized resolution approaches. As the digital economy continues to generate novel and complex IP issues, the ADR frameworks in the UK and EU are likely to evolve further, offering rights holders and technology users efficient, expert, and adaptable mechanisms for managing conflicts while supporting continued innovation and creativity.

Table no. 4 - Successful ADR Models from Other Countries

Country	Model	Why It Works
Singapore	SIMC Model	Strong institutional support and incentives
UK	Court-Annexed Mediation	Mandatory referrals by judges
USA	Community ADR Centres	Grassroots conflict resolution
Netherlands	Online Mediation Platform	Efficient digital resolution
Brazil	Multi-door Courthouse	Choice between ADR types under one roof

Source: Global Best Practices in ADR Report, OECD (2022).

[1132] Dr. Mukesh Kumar Malviya, "Jurisdictional Issues in International Arbitration with Special Reference to India," *Bharati Law Review* (March 2017).
[1133] Kimberley Chen Nobles, "Emerging Issues and Trends in International Arbitration," 43(5) California Western International Law Journal (2012).
[1134] Lhuillier, Julien, "The quality of penal mediation in Europe," Strasbourg, Council of Europe, European Commission for the Efficiency of Justice, Working Group on Mediation (2007).

5.6 India as a Global Mediator

Contemporary international relations have witnessed intensifying worldwide tensions and enduring strategic competitions, within which the Indian Republic has progressively established itself as a significant diplomatic intermediary. This evolution marks India's transition toward becoming an architect of transnational harmony. The contemporary European military engagement between Russian and Ukrainian forces, representing the continent's most extensive armed conflict since 1945, demonstrates the profound necessity for neutral diplomatic facilitators in resolving international disputes.

The Indian diplomatic apparatus has demonstrated substantial commitment through its constructive dialogue with both Moscow and Kyiv administrations. These diplomatic initiatives exemplify India's expanding significance in international peace-building frameworks. This diplomatic approach derives philosophical foundations from ancient Sanskrit conceptualizations, particularly "Vasudhaiva Kutumbakam" (conceptualizing humanity as a unified familial entity), alongside its historical adherence to non-alignment principles during Cold War polarization. Contemporary Indian international engagement continues to manifest these longstanding philosophical traditions emphasizing harmonious coexistence among diverse political entities.

Indian diplomatic philosophy synthesizes pragmatic contemporary statecraft with civilizational values emphasizing conciliation rather than confrontation. This distinctive approach provides theoretical foundations for India's emerging identity as an international mediator amidst intensifying geopolitical fragmentation. The substantive diplomatic communications with both Eastern European belligerents illustrate practical applications of these theoretical principles within contemporary international relations frameworks.

Traditional Indian philosophical traditions emphasizing interconnectedness and mutual accommodation provide conceptual frameworks particularly relevant to contemporary international mediation efforts. These ancient epistemological traditions, when incorporated into diplomatic methodology, offer alternative paradigms for conflict resolution beyond conventional Western approaches. India's diplomatic corps has increasingly operationalized these indigenous philosophical concepts within formal international engagement structures.

The substantial military confrontation in Eastern Europe has created diplomatic opportunities for nations maintaining balanced relationships with opposing parties. India's historical connections with Moscow, alongside its democratic alignment with Western nations, positions its diplomatic establishment advantageously for mediation initiatives. This unique relational configuration enables communication channels that might otherwise remain unavailable through conventional diplomatic mechanisms.[1135]

Through practical engagement with conflicting parties while maintaining principled neutrality, India demonstrates its evolving capacity as an international system stabilizer. This emerging diplomatic identity represents the practical manifestation of longstanding cultural values emphasizing harmony, alongside strategic calculations regarding India's optimal positioning within evolving international power configurations. The synthesis of philosophical heritage with contemporary diplomatic requirements characterizes India's distinctive contribution to international conflict resolution mechanisms during periods of systemic instability.

[1135] Kimberley Chen Nobles, "Emerging Issues and Trends in International Arbitration," 43(5) California Western International Law Journal (2012).

5.6.1 India's Historic Contribution

Throughout its post-independence history, India has established a distinguished record of diplomatic engagement aimed at fostering international peace, fundamentally anchored in its philosophical adherence to non-alignment and unwavering dedication to worldwide stability. The nation's approach to foreign relations has consistently prioritized negotiation over confrontation, resulting in numerous instances where Indian diplomatic initiatives have contributed meaningfully to conflict resolution across various geopolitical contexts.

The Austrian neutrality question of 1955 represents one of India's earliest diplomatic achievements on the global stage. Indian representatives exerted considerable influence in diplomatic circles, successfully encouraging Austrian authorities to embrace a neutral position in Cold War politics. This strategic diplomatic maneuver ultimately facilitated the complete withdrawal of Soviet military personnel from Austrian territory, restoring full sovereignty to the nation.

During the complex Korean situation of 1956, India demonstrated remarkable diplomatic finesse by establishing constructive dialogue channels between antagonistic powers including the United States, the People's Republic of China, and the Soviet Union. By facilitating these critical communications, India played an instrumental role in peace efforts during the Korean conflict, showcasing its capacity to navigate intricate international disputes with sophistication and impartiality.

India's appointment as Co-Chairman of the International Commission for Supervision and Control in Vietnam throughout the 1950s and 1960s further cemented its reputation as a reliable diplomatic intermediary. In this capacity, Indian representatives worked diligently toward maintaining regional stability in Southeast Asia through carefully orchestrated multilateral diplomatic initiatives, despite the challenging geopolitical environment of the era.

When China launched military operations against Vietnam in 1979, India demonstrated principled diplomatic resolve by immediately cancelling a planned high-level financial delegation to Beijing. This decisive action, coupled with expressions of solidarity with Vietnam, underscored India's fundamental opposition to unilateral aggression in international relations, regardless of potential diplomatic consequences.

In addressing the Goa question of 1961, Indian authorities employed sophisticated diplomatic strategies that enabled the former Portuguese colony's integration into the Indian Union without bloodshed. This approach exemplified India's characteristic preference for resolving territorial disputes through peaceful means whenever circumstances permitted such resolution.

The Kashmir dispute, which emerged immediately following independence in 1947-48, prompted India to engage with United Nations mechanisms, reflecting its institutional commitment to dialogue and multinational cooperation in conflict resolution. Although this particular territorial question remains unresolved, India's initial approach demonstrated its faith in established international frameworks for addressing complex sovereignty issues.

5.6.2 India's Evolving Role as a Mediator

Contemporary Indian diplomacy continues to demonstrate remarkable versatility through numerous forward-thinking initiatives that enhance its global influence and reputation. A notable illustration of this proactive diplomatic engagement occurred in 2018 when Indian intermediaries contributed significantly to negotiations that ultimately led to Saudi Arabian authorities granting Israeli carriers access to their airspace. This diplomatic achievement exemplifies India's growing capacity to

facilitate dialogue between traditionally adversarial nations in regions of substantial geopolitical sensitivity.

The philosophical underpinnings of India's foreign relations strategy have evolved into a sophisticated framework often characterized by five interconnected principles. These include the concepts of respect (Samman), dialogue (Samvaad), cooperation (Sahyog), peace (Shanti), and prosperity (Samriddhi). Together, these principles constitute a comprehensive approach that enables India to maintain an autonomous yet cooperative stance in international affairs, avoiding rigid ideological constraints while pursuing constructive engagement across diverse geopolitical contexts.

During the intensification of hostilities between Russia and Ukraine, Indian diplomatic interventions demonstrated particular significance. According to analytical reporting from CNN, Indian diplomatic communications with involved parties contributed meaningfully toward preventing potential nuclear escalation. This diplomatic initiative underscores India's preference for dialogue-based solutions to international crises, even in situations of extreme military tension between major powers.

When India assumed leadership of the G20 forum, diplomatic representatives seized the opportunity to elevate concerns regarding the disproportionate impact of European military conflict on developing economies. Through this platform, India effectively amplified perspectives from emerging nations that frequently remain underrepresented in discussions of global security architecture, reinforcing its position as an authentic representative of Global South interests in multilateral settings.

The historical traditions informing Indian diplomatic philosophy derive substantially from ancient concepts of non-violence (Ahimsa) and universal familial connection (Vasudhaiva Kutumbakam). These cultural foundations have translated into contemporary diplomatic practice that consistently prioritizes reconciliation methodologies rather than confrontational approaches when addressing international disputes.

India's reputation for humanitarian responsiveness was prominently displayed during the Maldivian water emergency of 2014. Within hours of the crisis declaration, Indian authorities dispatched substantial quantities of potable water to the affected island nation. This swift humanitarian intervention exemplifies India's commitment to regional stability through practical assistance during environmental emergencies, further solidifying its diplomatic relationships through tangible crisis management rather than merely rhetorical support.

5.6.3 Challenges Faced

India's capacity to function effectively as a neutral mediator in international disputes faces several significant constraints that warrant scholarly examination. The nation's voting record at the United Nations, particularly its decision to abstain from crucial resolutions addressing the military conflict between Russia and Ukraine, has generated substantial skepticism regarding its genuine commitment to impartiality in global affairs. These abstentions, while diplomatically calculated, potentially undermine India's credibility when positioning itself as an unbiased facilitator of peace processes in various international contexts.

The persistent state of tension characterizing India's relationships with several neighbouring states presents another considerable impediment to its peace facilitation aspirations. The protracted diplomatic friction with Pakistan, characterized by periodic border skirmishes and diplomatic impasses, substantially weakens India's standing when attempting to mediate in regionally sensitive conflict zones such as Afghanistan. International observers frequently question whether a nation experiencing such enduring bilateral complications can effectively guide others toward sustainable peace arrangements.

Economic and strategic considerations further complicate India's diplomatic maneuverability in peace initiatives. The country's substantial dependence on petroleum imports from Russian sources, coupled with long-established defense procurement relationships with Moscow, creates inevitable constraints on India's diplomatic autonomy. These economic interdependencies potentially restrict India's capacity to adopt more decisive stances during international peace negotiations, particularly in scenarios where Russian strategic interests are significantly implicated.

When assessed against established global diplomatic powers, notably the United States, India exhibits noteworthy limitations in diplomatic leverage and influence within international institutions. Despite its growing economic significance, India's comparative diplomatic capacity remains relatively modest, limiting its ability to meaningfully influence outcomes in complex multinational negotiations or to effectively pressure conflicting parties toward compromise solutions in entrenched disputes.

Domestic stability concerns similarly affect India's international peace mediation credentials. Ongoing internal security challenges, including separatist movements and unresolved territorial questions within its borders, complicate India's efforts to present itself as an exemplary model of conflict resolution practices. These internal vulnerabilities potentially undermine the nation's authority when advocating for peaceful solutions abroad while simultaneously addressing persistent security challenges within its own territory.

Collectively, these factors create substantial obstacles to India's aspirations of becoming a pre-eminent diplomatic mediator in global conflicts, despite its historical commitment to principles of non-alignment and peaceful coexistence.

CHAPTER 6: CONCLUSION & RECOMMENDATIONS

6.1 Conclusion

The advent of the Mediation Act, 2023 is a landmark moment in the landscape of alternative dispute resolution (ADR) in India. It has put in place a separate legislation for the first time to consolidate mediation practices; set legal standards; and seek to harmonise a previously fragmented framework. According to the Act, mediation is: By codifying mediation, the Act seeks to resolve such long-standing uncertainties in practice and to mainstream a process which had lie in a ghetto in the dispute resolution landscape. Essentially, the Act, heralds the rise of mediation in India, which signifies the shift away from voluntary, informal add-on to a legitimate, stand-alone legal remedy.

The Indian model, in contrast to its developed counterparts, is still in its formative stage. The US, UK and Singapore, etc developed their ADR ecosystems decades ago with supportive legislation complemented by institutional infrastructure and cultural acceptance.[1136] The U.S. Federal Arbitration Act with its system of mediation centres, UK's Arbitration Act with strong judicial oversight, EU Mediation Directive ensuring mutual enforceability, Singapore's including the Singapore Convention on Mediation — these are examples of how ADR has matured as an institution within the justice system. Though India's Mediation Act is modelled on these frameworks — particularly around concepts like providing for enforceability of mediation agreements and pre-litigation mediation — India lags in operational depth in this domain, and indeed, the extent to which there is cultural embedding of ADR in these countries.

There are a number of both opportunities and challenges arising from the effort to reduce India ADR framework in line with global best practices. One of the most pressing challenges is to be institutionally ready. India does not have independent mediation centres spread across the country with proper standards of accreditation and oversight mechanisms. And while the seamless system

[1136] Ronán Feehily, "Neutrality, Independence and Impartiality in International Commercial Arbitration," 7(88) *Penn State Journal of Law & International Affairs* (2019).

driven by SIAC and SIMC kick-starts in Singapore, the reality in India continues to play out in large part on extant court infrastructure, which is already overburdened. Many people, including those involved in legal cases and legal professionals, don't have much understanding or trust in mediation. They are unsure about its validity as a solution, which makes them hesitant to use it. This hesitation slows down how often it is used and limits its effectiveness.

A significant issue is ensuring that agreements made through mediation are enforced. Even though the law treats these agreements like court orders, the system to enforce them quickly and consistently is still lacking. International enforcement is also a problem. India hasn't adopted the Singapore Convention on Mediation, making it harder to settle disputes between countries through mediation. This is especially true for business and investment issues.[1137]

Despite these challenges, there are significant opportunities. India is changing its laws in a positive way, creating a unique chance to rethink how disputes are handled. With many court cases delayed, alternative ways to resolve disputes are not just optional but crucial. The law now officially recognizes methods like online mediation, community mediation, and institutional mediation, which can use technology to handle disputes on a larger scale. Additionally, these new laws fit well with existing systems like the Civil Procedure Code and the Arbitration and Conciliation Act, helping to create a more unified legal process.

6.2 Recommendations

6.2.1 Institutional Reforms & Capacity Building

A robust and sustainable alternative dispute resolution (ADR) ecosystem requires the development of well-established, resource-rich, and independent institutions capable of efficiently managing, training, and accrediting mediators and arbitrators. The success of ADR in any jurisdiction hinges on the credibility and structure of its supporting institutions. India, in its quest to enhance the ADR landscape, can draw inspiration from globally recognized bodies like Singapore's Singapore International Arbitration Centre (SIAC) and the United Kingdom's Centre for Effective Dispute Resolution (CEDR). These institutions have earned a reputation for their neutrality, professionalism, and effective dispute resolution processes. Adopting a similar institutional model could provide India with the structure needed to institutionalize mediation and arbitration, promoting both public and private confidence in these mechanisms.[1138]

One of the first critical steps is to establish independent ADR institutions that are equipped with the necessary financial and operational resources. These bodies would not only oversee the accreditation of mediators and arbitrators but also ensure that they meet internationally recognized standards of professionalism. Such institutions would play a crucial role in creating an atmosphere of trust and respect, which is essential for the growth of ADR practices in India. By fostering a network of accredited professionals, these institutions can standardize practices and ensure a level of consistency that will be critical in gaining public confidence in ADR processes.

Equally important is the need to invest in capacity building within the legal profession. Judges, legal professionals, and law enforcement officers must be equipped with the knowledge and skills required to engage with ADR processes effectively. In many cases, ADR can be an unfamiliar or underutilized tool for dispute resolution, and this lack of familiarity can deter its adoption. By integrating ADR into the training programs for legal professionals, India can create a generation of practitioners who understand and value ADR processes. Judicial officers, in particular, should be given the tools to

[1137] Dr. Pankaj Kumar Gupta & Sunil Mittal, Commercial Arbitration in India, 2 International Conference on Economics, Business and Management IPEDR (2010).
[1138] Dzyuba Lyubov Mikhailovna et al., "The Application of the Law in International Commercial Arbitration," 5(2) *International Journal of Economics and Business Administration* (2017).

actively refer cases for ADR and oversee ADR proceedings to ensure fairness. This would not only increase the flow of cases into ADR systems but would also reduce the burden on an overstrained judiciary.[1139]

Training should not be limited to the traditional legal elite based in metropolitan areas but should extend to law enforcement officers and legal professionals in rural and semi-urban regions. India's vast geographical spread and diverse population mean that equitable access to ADR services is vital for the effectiveness of any reforms. Capacity building efforts must ensure that legal professionals in smaller towns and villages are not left behind in the ADR movement. Offering regular training sessions, workshops, and seminars in regional centers can help address this gap and ensure that ADR becomes a widely understood and available option for resolving disputes. These initiatives could also help spread the practice of ADR beyond commercial and high-value cases into family disputes, landlord-tenant matters, and other areas where mediation can be an efficient and cost-effective solution.

Moreover, academic institutions have an important role to play in shaping the future of ADR in India. Legal education should be restructured to integrate ADR not just as a theoretical subject but as a practical tool of justice delivery. By incorporating practical training and case simulations into curricula, law schools can prepare students to navigate and implement ADR processes effectively. Given the increasing importance of mediation and arbitration in global legal practice, law students should graduate with a strong grasp of ADR techniques, negotiation strategies, and the underlying principles of fairness and neutrality. This academic approach would not only ensure a steady supply of competent ADR professionals but also encourage a broader societal acceptance of ADR as an essential part of the justice system.

Thus, institutional reforms and capacity building are the cornerstone of a sustainable and effective ADR ecosystem in India. The establishment of independent, well-resourced ADR institutions, investment in training for legal professionals, and expansion of ADR education in academic institutions are essential for ensuring that India's ADR mechanisms can meet the growing demand for efficient and accessible justice. By focusing on these areas, India can develop an ADR landscape that is not only structured and professional but also widely accessible and trusted across all regions of the country.

6.2.2 Strengthening Enforcement of ADR Outcomes

Strengthening the enforcement of Alternative Dispute Resolution (ADR) outcomes is one of the most critical steps towards ensuring the effectiveness and legitimacy of ADR mechanisms in India. Despite the Mediation Act of 2023 making significant strides by giving mediated settlements the status of decrees, there remains a substantial gap between the legal framework and its actual implementation. The recognition and enforcement of ADR outcomes, both domestically and internationally, remain uncertain and often inconsistent. This lack of clarity presents a significant barrier to the widespread adoption of ADR, as parties are hesitant to engage in ADR processes if the outcomes are not guaranteed to be enforceable.

One of the fundamental challenges lies in the absence of clear, standardized procedures for the recognition and enforcement of mediated settlements. While the Mediation Act grants mediated settlements the status of a court decree, there is a need for further clarity on how these settlements will be executed in practice. In many instances, parties who have reached a mediation settlement

[1139] Dr. Pankaj Kumar Gupta & Sunil Mittal, Commercial Arbitration in India, 2 International Conference on Economics, Business and Management IPEDR (2010).

face difficulties in ensuring that the other party complies with the terms of the agreement. This issue is compounded by the reluctance of some courts to recognize mediated agreements, as well as the procedural delays within the judicial system that often render enforcement slow and cumbersome. To remedy this, it is imperative to establish specific procedural rules that define the process by which mediated settlements are to be enforced. These rules should outline the steps necessary to convert a mediated settlement into a legally binding and executable order, ensuring that there are no ambiguities when it comes to enforcement.

Moreover, the enforcement mechanism for domestic mediated agreements needs to be robust enough to deter non-compliance. Courts should be empowered to enforce mediated settlements proactively and expeditiously, without the usual procedural delays that often plague the traditional litigation process. This can be achieved by creating dedicated ADR enforcement units within the judicial system or by establishing specialized ADR enforcement courts that focus solely on ensuring the implementation of ADR outcomes. Such initiatives would streamline the enforcement process and make it more efficient, encouraging litigants to use ADR methods with confidence.

In the context of international ADR outcomes, India faces an additional challenge. The absence of international enforceability means that parties engaging in cross-border mediation are often unsure whether the mediated settlement will be recognized in other jurisdictions. This uncertainty deters foreign investors and businesses from utilizing India as a destination for dispute resolution, as they may not be confident that any mediated settlements will hold up in their home country. To address this issue, India should seriously consider ratifying the Singapore Convention on Mediation. The Convention provides a multilateral framework for the enforcement of international mediated settlements, giving them the same status as arbitral awards under the New York Convention. By ratifying this Convention, India would align itself with global best practices in dispute resolution, signalling its commitment to becoming a global hub for commercial dispute resolution.

Ratifying the Singapore Convention would not only enhance the enforceability of international mediated settlements but also boost India's reputation as a jurisdiction that supports efficient, fair, and accessible dispute resolution. This would have a direct impact on attracting international businesses and investors, who would view India as a favorable and reliable jurisdiction for resolving disputes. Furthermore, India's adoption of the Singapore Convention would send a strong message about the country's dedication to modernizing its legal system and embracing international standards in ADR practices.

Hence, while the Mediation Act has paved the way for a more structured and formalized approach to ADR in India, the enforcement of ADR outcomes remains a critical issue that needs to be addressed. Establishing clear procedural rules for the recognition and execution of mediated agreements, both domestically and internationally, is essential to build trust in the ADR process. India's potential ratification of the Singapore Convention on Mediation would be a significant step towards improving the enforceability of international mediated settlements, thereby enhancing India's position as a global leader in commercial dispute resolution. Through these reforms, India can foster an environment where ADR is not only a viable alternative to litigation but also an effective and reliable mechanism for resolving disputes.

6.2.3 Legislative & Judicial Reforms

The effectiveness of alternative dispute resolution (ADR) in India is inextricably linked to broader legislative and judicial reforms. While the enactment of the Mediation Act, 2023 has laid the foundation for formalizing mediation in the country, its success hinges on the integration of ADR within the larger legal framework. For ADR mechanisms to function seamlessly, it is crucial to address

conflicts and gaps between the Mediation Act, the Arbitration and Conciliation Act, and sector-specific laws. These legislative inconsistencies can create ambiguity, complicating the process for legal practitioners and disputants alike. A unified ADR code that harmonizes these legal provisions would offer clarity, streamline procedures, and ensure the smooth functioning of both mediation and arbitration as complementary dispute resolution tools. Without such harmonization, ADR will remain fragmented, limiting its potential to alleviate the burden on India's overburdened judicial system.[1140]

At the core of legislative reform is the need for clear, consistent guidelines that foster an integrated ADR framework. This would include addressing issues related to the scope and applicability of various ADR methods across different legal contexts. For example, the Mediation Act and the Arbitration and Conciliation Act must be reconciled to avoid overlap and ensure that each system is utilized appropriately. By developing a cohesive legal structure, India can create a robust and effective ADR framework that allows for greater efficiency and accessibility while reducing judicial delays. Moreover, the creation of specialized laws for various sectors, such as family law or commercial law, should be considered, allowing ADR methods like mediation to be more easily adopted within these areas. This will help expand the scope of ADR beyond general litigation, increasing its versatility and utility in resolving a wider range of disputes.

However, legislative changes alone are insufficient. The judiciary also plays a central role in the success of ADR, and judicial reforms are needed to ensure that the benefits of ADR are fully realized. Courts must be proactive in encouraging ADR by referring appropriate cases to mediation or arbitration at the earliest stages of litigation.[1141] This requires a cultural shift within the judicial system, where ADR is seen not just as a peripheral option but as a mainstream, viable path to dispute resolution. Judges should be encouraged to recognize the potential benefits of ADR, both for the parties involved and for the judicial system as a whole. Referrals should be made systematically, and clear guidelines should be established for when and how cases should be diverted to ADR. Courts must also ensure that the referral process is efficient, minimizing delays and ensuring that cases are promptly directed to the appropriate ADR mechanism.

In addition to referrals, courts must play an active role in upholding the outcomes of ADR processes.[1142] Mediated agreements should carry the same weight as judgments passed by the courts, and courts must be diligent in enforcing these agreements. One of the key factors that hinder the growth of ADR in India is the uncertainty surrounding the enforcement of mediated outcomes. While the Mediation Act grants mediated settlements the status of a decree, ensuring their enforcement requires greater clarity and more robust mechanisms for follow-through. Courts must demonstrate their commitment to upholding ADR outcomes by making enforcement a priority and establishing a streamlined process for the execution of mediated agreements.

Judicial reforms must also focus on enhancing the capacity of the courts to handle ADR cases effectively. One potential solution is the establishment of special ADR benches or support units within the judiciary. These dedicated bodies would be responsible for overseeing the implementation of ADR, ensuring that processes are adhered to and that disputes are resolved in a timely manner. These units could also monitor the compliance of parties with mediated agreements and offer oversight of ADR practitioners to maintain high standards of quality and professionalism. The creation of such specialized units would help build judicial expertise in ADR and ensure that the processes remain efficient and fair.

[1140] Dr. Pankaj Kumar Gupta & Sunil Mittal, Commercial Arbitration in India, 2 International Conference on Economics, Business and Management IPEDR (2010).
[1141] Dr. Mukesh Kumar Malviya, "Jurisdictional Issues in International Arbitration with Special Reference to India," *Bharati Law Review* (March 2017).
[1142] Dzyuba Lyubov Mikhailovna et al., "The Application of the Law in International Commercial Arbitration," 5(2) *International Journal of Economics and Business Administration* (2017).

Moreover, it is essential to provide training and capacity-building programs for judges, lawyers, and other legal professionals to ensure they are well-versed in ADR methods and can effectively navigate the evolving landscape of dispute resolution. By building expertise within the judiciary, India can ensure that ADR mechanisms are utilized to their full potential, creating a more efficient and accessible justice system.

For ADR to be truly successful in India, it requires both comprehensive legislative and judicial reforms. Legislative harmonization, coupled with proactive court involvement and specialized judicial support for ADR, will create an environment where ADR can flourish.[1143] By fostering a culture that prioritizes ADR and providing the necessary resources for its successful implementation, India can build a more efficient, accessible, and effective justice system. These reforms are essential for addressing the pressing need for timely dispute resolution and reducing the burden on the country's courts.

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